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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

CREEKSHAW OWNERS ASSOCIATION, INC.

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTION
FOR
CREEKSHAW OWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 3rd day of May 2021, by WJ Creekshaw LP a Texas limited partnership (hereinafter referred to as "Declarant").

Declarant is the owner of the real property. Declarant intends by this Declaration to impose upon the Properties (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Properties as are now or hereafter subjected to this Declaration.

Declarant hereby declares that all of the property and any additional property which is hereafter subjected to this Declaration by Supplemental Declaration (as defined herein) shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann., Section 81.001, et seq. (Vernon 1984).

**Article I
DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

Section 1. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement with any Neighborhood, become the responsibility of the Association.

Section 2. "Articles of Incorporation" or "Articles" shall refer to the Articles of Incorporation of Creekshaw Owners Association, Inc. as filed with the Secretary of State of the State of Texas.

Section 3. "Association" shall refer to Creekshaw Owners Association, Inc. a Texas corporation, its successors or assigns.

Section 4. "Base Assessment" shall refer to assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Article X, Sections 1 and 2.

Section 5. "Benefited Assessment" shall mean assessments levied in accordance

with Article X, Section 6 of this Declaration.

Section 6. "Board of Directors" or "Board" shall be the body responsible for administration of the Association, and generally serving the same role as the board of directors under Texas corporate law.

Section 7. "Builder" shall mean any Person which purchases one or more Units or parcels of land within the Properties for the purpose of constructing improvements thereon for resale in the ordinary course of such Person's business.

Section 8. "City" shall mean the City of Royse City, Texas, a municipal corporation.

Section 9. "Class 'B' Control Period" shall refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors.

Section 10. "Common Area" shall mean all real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, and shall include Exclusive Common Areas, as defined below.

Section 11. "Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Unit Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration and the Articles of Incorporation of the Association, but shall not include any development costs incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association.

Section 12. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the New Construction Committee.

Section 13. "Declarant" shall refer to WJ Creekshaw LP, a Texas limited partnership, qualified to do business in Texas, or any successor, successor-in-title, or assign who takes title to any portion of the real property for the purpose of development and/or sale in the ordinary course of such Person's business and who is (a) Declarant's lender under any financing obtained by Declarant for development of the Properties, or (b) designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

Section 14. "Exclusive Common Area" shall refer to a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

Section 15. "Master Land Use Plan" shall refer to the master land use plan for the development of the Creekshaw community prepared by or on behalf of Declarant, as it may be amended from time to time, which plan includes the property and all or a portion of the property which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Land Use Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property from the Master Land Use Plan bar its

later annexation in accordance with Article IX.

Section 16. "Member" shall refer to a Person entitled to membership in the Association, as provided in Article III, Section 2.

Section 17. "Mortgage" shall refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

Section 18. "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

Section 19. "Mortgagor" shall refer to any Person who gives a Mortgage.

Section 20. "Neighborhood" shall refer to each separately developed residential area within the Properties, whether or not governed by a Neighborhood Association (as defined in Section 22 below), in which the Owners of Units may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each condominium, town home development, cluster home development, and single-family detached development may constitute a separate neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee or Neighborhood Association having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Article III, Section 4, of this Declaration.

Section 21. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article X, Sections 1 and 3 of this Declaration.

Section 22. "Neighborhood Association" shall refer to any condominium association or other owners associations having concurrent jurisdiction over any Neighborhood.

Section 23. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein or in Supplemental Declarations applicable to the Neighborhoods.

Section 24. "Owner" shall refer to one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

Section 25. "Person" shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 26. "Properties" shall mean and refer to the real property together with such additional property as is hereafter subjected to this Declaration in accordance with Article IX.

Section 27. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 5 of this Declaration.

Section 28. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

Section 29. "Unit" shall mean a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, common property of Neighborhood Association, or property dedicated to the public. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Land Use Plan or the site plan approved by Declarant, whichever is more recent, until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

Section 30. "Voting Member" shall refer to the representative(s) selected by the Members within each Neighborhood as provided in Article III, Section 4(b), to be responsible for casting votes attributable to Units in the Neighborhood on all matters requiring a vote of the membership. The term "Voting Member" shall include any alternate Voting Member acting in the absence of a Voting Member, any Owner authorized to personally cast the vote for its Unit pursuant to Article III, Section 4(b), and the Class "B" Member, so long as such membership exists.

Article II PROPERTY RIGHTS

Section 1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to the occupants of Units and their guests and rules limiting the number of guests who may use the Common Area;

(c) The right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental

Declaration, or rules of the Association after notice and a hearing;

(d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article IV, Section 8 hereof;

(e) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other fees for the use of any recreational facility situated upon the Common Area;

(f) The right of the Board to permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(g) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Article XIV, Section 2 hereof; and

(h) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2 below.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

Section 2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of Units within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation an Exclusive Common Area may include recreational facilities, entry features, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed by which the Declarant conveys the Common Area to the Association or on the plat of survey relating to such Common Area; provided, any such assignment shall not be exclusive and shall not preclude the Declarant from later assigning the same Exclusive Common Area to additional Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Article IX, Section 1.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood, or Neighborhoods and Exclusive Common Area may be reassigned, upon the vote of Voting Members representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) to which the Exclusive Common Areas are assigned, if applicable, and within the Neighborhood(s) to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the consent of the Declarant.

The Association may, upon majority vote of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which Exclusive Common Areas are assigned, permit Owners of Units in other Neighborhoods to use all or portions of such Exclusive Common Areas upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Areas.

Article III
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

Section 1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area. In addition, the Association shall be responsible for the enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt, and for administering and enforcing the architectural standards and controls set forth in this Declaration pursuant to Article XI. The Association shall perform its functions in accordance with this Declaration, and Texas law.

Section 2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit; if a Unit is owned by more than one Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3 of this Article, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) **Class A.** Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall be entitled to one equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; there shall be only one vote per Unit. Unless otherwise specified in this Declaration, the vote for each Unit shall be exercised by a Voting Member representing the Neighborhood of which the Unit is a part, as provided in Section 4(b) of this Article. The Voting Members may cast the votes which they represent as they, in their discretion, deem appropriate.

In any situation where a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, are specified elsewhere in the Declaration. Initially, the Class "B" Member shall be entitled to 2,200 votes; this number shall be decreased by one vote for each Class "A" membership outstanding at any given time. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors during the Class "B" Control Period. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove certain actions of the Board

of Directors and committees.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

- (i) expiration of the Class "B" control period pursuant to Article III of the By-Laws
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Section 4. Neighborhoods and Voting Members.

(a) Neighborhoods. Every Unit shall be located within a Neighborhood. In the discretion of the Owner(s) and developer(s) of each Neighborhood, the Units within a particular Neighborhood may be subject to additional covenants and/or the Unit Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except in the case of a condominium or otherwise as required by law. The Owners of Units in any Neighborhood which does not have a Neighborhood Association may elect a Neighborhood Committee, to represent the interests of such Owners.

Each Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Units in such Neighborhood upon the affirmative vote, written consent, or a combination thereof of the Owners of a majority of the Units within the Neighborhood. In such event, the Association may provide the requested services, if the Board deems it appropriate. The cost of such services shall be assessed against the Units within such Neighborhood as a Neighborhood Assessment pursuant to Article X hereof.

Exhibit "A" to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. The Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries; provided, two or more Neighborhoods previously established shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The Owner(s) of a majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a plat or survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within 30 days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

At any meeting of the Owners of Units in a Neighborhood, except that the term "Voting Member" as used in those Sections shall refer to the Class "A" Members within the Neighborhood and references to votes in "the Association" shall refer to the Class "A" votes in the Neighborhood.

(b) Voting Members. The Class "A" Members within each Neighborhood may elect one Voting Member for each 50 Units within the Neighborhood (rounded up to the nearest 50). On all Association matters requiring a membership vote, each such Voting Member shall be entitled to cast that number of votes determined by dividing the total number of Class "A" votes in the Neighborhood by the number of Voting Members elected from such Neighborhood, except as otherwise specified in this Declaration. If Voting Member(s) are elected, then the Class "A" Members within each Neighborhood shall also elect one or more alternate Voting Members to be responsible for casting such votes in the absence of a Voting Member.

Upon the first election of Voting Member(s), the Voting Member(s) and alternate Voting Member(s) from each Neighborhood shall be elected on an annual basis, either by written ballot or at a meeting of the Class "A" Members within such Neighborhood, as determined by the Board; provided, upon written petition signed by Class "A" Members holding at least ten (10%) percent of the Class "A" votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Class "A" Members representing at least thirty (30%) percent of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any meeting of the Neighborhood.

The Board may call for the first election of the Voting Member(s) and alternative Voting Member(s) from a Neighborhood at any time after the first conveyance of a Unit in the Neighborhood to a Person other than a Builder. Subsequent elections shall be held within 30 days of the same date each year. Each Class "A" Member shall be entitled to cast one equal vote for each Unit which it owns in the Neighborhood for each position. The candidate for each position who receives the greatest number of votes shall be elected to serve a term of one year and until a successor is elected. Any Owner of a Unit in the Neighborhood may submit nominations for election or declare himself a candidate in accordance with procedures which the Board shall establish.

Any Voting Member may be removed, with or without cause, upon the vote or written petition of Owners of a majority of the total number of Units owned by Class "A" Members in the Neighborhood which such Voting Member represents.

Until such time as the Board first calls for election of a Voting Member for a Neighborhood, the Owners within such Neighborhood may personally cast the votes attributable to their respective Units on any issue requiring a vote of the Voting Members under this Declaration.

Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to such restrictions as are set forth herein. The Declarant may convey to the Association improved or unimproved real estate located within the properties, personal property, and leasehold or other property interests. Upon conveyance or dedication by the Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed of conveyance. The Declarant shall convey the initial

Common Area to the Association prior to the conveyance of a Unit to any Person other than a Builder or developer holding title for the purpose of development and resale.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, in addition to, further defining, or limiting the rights, covenants and restrictions set forth in this Declaration. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees, if any, until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Members, so long as such membership shall exist.

Section 4. Enforcement. The Association shall be authorized to impose sanctions for violations of this Declaration, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association, through the Board, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county and city ordinances, if applicable, and to permit Rockwall County to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, or reasonably implied from the existence of or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, all rights and powers of the Association may be exercised by the Board of Directors without a vote of the membership.

Section 6. Governmental Interest. For so long as the Declarant owns any property, the Association shall permit the Declarant to designate and redesignate sites within the Properties for fire, police, water, and sewer facilities, public schools and parks, and other public facilities. The sites may include Common Areas owned by the Association, and in such case no membership approval shall be required and the Association shall dedicate and convey the designated site as requested by the Declarant.

Section 7. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been on officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or

former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 8. Dedication of Common Areas. The Association, acting through the Board of Directors upon two-thirds (2/3) vote thereof, shall have the power to dedicate portions of the Common Areas to Rockwall County, Texas, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Article XIV, Section 2 of this Declaration, however, any such dedication shall become effective only upon written acceptance by the prospective recipient governmental agency(ies).

Section 9. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BE REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSORS DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

Section 10. Powers of the Association Relating to Neighborhoods. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee and (b) require that a proposed budget include certain items and that expenditures be made therefor.

Any action required by the Association in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association or Neighborhood Committee shall be taken within the reasonable time frame set by the Association in such written notice. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in such written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Article X, Section 5(b). Such assessments may be collected as a Special Assessment hereunder and shall be subject to all lien rights provided for herein.

Article V
MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to:

(a) all landscaping and other flora, parks, lakes, structures, and improvements, including any private streets, recreational facilities, screening walls, entry features, bike and pedestrian pathways/trails, situated upon the Common Area;

(b) landscaping within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by the Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(d) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant and written acceptance by the City.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specified provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any other recorded

covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all landscaping, structures, parking areas, sidewalks, and other improvements within the boundaries of the Unit. All Units shall be kept in a well landscaped condition so as to produce the best aesthetic effect. Each Owner shall maintain the driveway serving his or her Unit whether or not lying entirely within the Unit boundaries, and shall maintain all landscaping on that portion of the Common Area or public right-of-way between the Unit boundary and the nearest curb or pavement edge of the adjoining street(s). Owners of Units which are adjacent to any portion of the Common Area on which decorative walls or fences have been constructed shall also maintain that portion of the Common Area which lies between such wall or fence and the Unit boundary. Owners of Units which abut the bank or water's edge, or abut a portion of the Common Area abutting the bank or water's edge, of any lake, pond, stream, or wetlands area within the Properties shall maintain all landscaping between the Unit boundary and such bank or water's edge; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article XI hereof. Boundary planting along front Unit lines or side Unit lines adjacent to a street, except trees with single trunks, shall not be permitted to grow higher than three (3) feet. No boundary planting shall be allowed outside rear Unit lines. Each Unit Owner shall cut and maintain all of his trees, shrubs and hedges so that no part thereof extends across any Unit boundary line without the permission of the Owner of the Unit across which the planting extends.

An Owner shall be excused from its responsibility hereunder to the extent that such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and Owner in accordance with Article X, Section 5(b) of this Declaration. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when immediate entry is required due to an emergency situation.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, the Owners of Units within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

Any Neighborhood Association whose common property is adjacent to any portion of the Common Area upon which a decorative wall or fence is constructed shall maintain all landscaping on that portion of the Common Area between the wall or fence and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain all landscaping on that portion of the Common Area or right-of-way between the property line and the nearest curb or pavement edge of such roadway. Any Neighborhood Association whose common property abuts the bank of water's edge, or abuts a

portion of the Common Area abutting the bank or water's edge, of any lake, pond, stream, or wetlands area within the Properties shall maintain all landscaping between the boundary of its property and such bank or water's edge; provided there shall be no right to remove trees, scrubs or similar vegetation from this area without prior approval pursuant to Article XI hereof.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within such Neighborhood pursuant to additional covenants applicable to such Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Article X, Section 5(b) of this Declaration.

Section 4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association, and/or an Owner and/or a Neighborhood Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

Section 5. Party Walls and Party Fences.

(a) **General Rules of Law to Apply.** Each wall, fence or driveway built as a part of the original construction on the Units which shall serve and/or separate any two adjoining Units shall constitute a party wall, party fence, or party driveway, as applicable. To the extent not inconsistent with the provisions of this Section, the general rule of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall, fence or driveway shall be shared equally by the Owners who make use of the wall, fence or driveway.

(c) **Damage and Destruction.** If a party wall, fence or driveway is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall, fence or driveway may restore it. If other Owners thereafter use the wall, fence or driveway, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) **Arbitration.** In the event of any dispute arising concerning a party wall, fence, or driveway each party shall appoint one arbitrator. Should any party refuse to appoint an arbitrator within 10 days after written request by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators appointed shall appoint one additional arbitrator. The decision by a majority of all three arbitrators shall be binding upon the parties and shall be a condition precedent to any right of legal action that either party may have against the other.

Article VI
INSURANCE AND CASUALTY LOSSES

Section 1. Association Insurance. The Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect adequate blanket "all-risk" property insurance on properties within such Neighborhood, if reasonably available. If "all-risk" property insurance is not reasonably available, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Units within the benefited Neighborhood as a Neighborhood Assessment. All policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

The Board also shall obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents, or contractors while acting on behalf of the Association. If reasonably available, the public liability policy shall have a least a One Million (\$1,000,000.00) Dollar combined single limit as respects bodily injury and property damage, at least a Two Million (\$2,000,000.00) Dollar limit per occurrence and in the aggregate.

Except as otherwise provided above with respect to property within a Neighborhood, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be incurred in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefited unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard, that the loss is the result of the negligence or willful conduct of one or more Unit Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Article X, Section 5(b).

All insurance coverage obtained by the Board of Directors, whether obtained on behalf of the Association or a Neighborhood, shall be governed by the following provisions:

(a) All policies shall be written with a company authorized to do business in Texas which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly

equivalent rating which is available.

(b) All insurance shall be written in the name of the Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood, and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors.

(d) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) All property insurance policies shall have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it also shall have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Rockwall County, Texas area.

(f) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a time thereafter as mandated by the State of Texas Department of Insurance for such events, within which it may be cured by the Association, its manager, any Owner, or Mortgagee;

(v) a statement that the Association will be given at least 30 days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if reasonably available, covering all persons responsible for handling Association funds. The amount of fidelity coverage shall be determined in the Board of Directors' best business judgement but, if reasonably available, may not be less than one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Bonds shall include coverage for noncompensated persons and shall require at

least 30 days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Unit(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and thereafter shall maintain the Unit in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction by fire or other peril to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the voting Members representing at least seventy-five (75%) percent of the total Class "A" votes in the Association, and the Class "B" Members, if any, decide within 60 days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Unit Owners representing at least seventy-five (75%) percent of the total vote of the Neighborhood Association decide within 60 days after the damage or destruction not to repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties shall be cleared of all debris and ruins. Thereafter the Properties shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association or the Neighborhood Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area or to the common property of a Neighborhood Association, the Board of Directors may, without the necessity of a vote of the Voting Members, levy a special assessment against those Unit Owners responsible for the premiums for the applicable insurance coverage under Section 1 of this Article. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article VII
NO PARTITION

Except as is permitted in this Declaration or amendments hereto, there shall be no judicial partition of the Common Area or any part thereof. No person acquiring any interest in the Properties or any part thereof shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article VIII
CONDEMNATION

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven (67%) percent of the total Class "A" votes in the Association and of the Declarant, (as long as the Declarant owns any property) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property, and Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in

Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

Article IX
ANNEXATION AND WITHDRAWAL OF PROPERTY

Section 1. Annexation Without Approval of Membership. The Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all property has been subjected to this Declaration or December 31, 2050, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property. The Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the County Clerk Official Records of Rockwall County, Texas. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided herein.

Section 2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the County Clerk Official Records of Rockwall County, Texas. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Withdrawal of Property. Subject to the terms of Article XIV, Section 10, the Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the community pursuant to Section 1 of this Article IX, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

Section 4. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to

maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

Section 5. Amendments. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property.

Article X ASSESSMENTS

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 8 of this Article. There shall be four types of assessment: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 5 below; and (d) Benefited Assessments as described in Section 6 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Texas law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 7 of this Article. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. In the event of a transfer of title to a Unit, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function

required to be taken or performed by the Association or Board under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

During the Class "B" Control Period, the Declarant may annually elect either to pay regular assessments on its unsold Units or to pay to the Association the difference between the amount of assessments collected on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board of Directors in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Units owned by the Declarant to secure the Declarant's obligations under this paragraph, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Units under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Base Assessment. It shall be the duty of the Board, at least 60 days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expense of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in Section 4 of this Article.

The Base Assessment shall be levied equally against all Units and shall be set at a level which is reasonably expected to produce the total income of the Association equal to the total budgeted Common Expense, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 8 hereof on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessments during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX hereof, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 1 above), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and its characterization shall be made known to the membership. The payment of such subsidy in any year shall under no circumstance obligate the Declarant to continue payment of such subsidy in future years, unless provided for in a separate written agreement between Declarant and the Association.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five (75%) percent of the total Class "A" votes in the Association and seventy-five (75%) percent of the total number of Voting Members, and by the Class "B" Member, if such exists.

There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Voting Members as provided for special meetings, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 3. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least 60 days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, or any Supplemental Declaration, specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items, if any, maintained as a Neighborhood Expense. Neighborhood Expenses shall be allocated equally among the Units within the Neighborhood benefited thereby and levied as a Neighborhood Assessment, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by the Neighborhood in writing to the Board of Directors.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by the Owners of a majority of the Units in the Neighborhood(s) to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten (10%) percent of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Assessments or Neighborhood Assessments, as appropriate, over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 2 and 3 of this Article.

Section 5. Special Assessments.

(a) Unbudgeted Expenses. In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Voting Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing at least fifty-one (51%) percent of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Costs to Cure Non-compliance. The Association may levy a Special Assessment against any Unit or Neighborhood to reimburse the Association for costs incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, and the Association rules and regulations. Such Special Assessments may be levied upon the vote of the Board after notice to the Unit Owner or the Voting Member(s) from the Neighborhood, as applicable.

Section 6. Benefited Assessments. The Board shall have the power to assess expenses of the Association in the amount of the benefit received against Units receiving benefits, items, or services not provided to all Units within a Neighborhood or within the Properties (a) that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests.

Section 7. Lien for Assessments. The Declarant does hereby establish, reserve, create and subject each Unit to a perfected contractual lien in favor for the Association to secure payment of delinquent assessments owed on account of such Unit, as well as interest (subject to the limitations of Texas law), late charges and costs of collection (including, without limitation, attorney's fees). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Declarant hereby assigns such lien to the Association without recourse. The lien shall be self operative, and shall continue in inchoate form without being reserved or referenced in any deed or other document and without any other action required. Such lien, when delinquent, may be enforced by suit, judgement and judicial or nonjudicial foreclosure in accordance with Texas law.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended. At any foreclosure

proceeding, any Person, including but not limited to Declarant, the Association, and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which the Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgement for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8 below, including such acquires, its successors and assigns.

Section 8. Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Section 9. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is levied, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 10. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to five hundred dollars (\$500). This amount shall be in addition to, not in lieu of the annual Base Assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration.

Section 11. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area;
- (b) All property dedicated to and accepted by any governmental authority or public

utility, including without limitation public schools, public streets, and public parks, if any; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of the Owners of Units in such Neighborhood, or owned by such Owners in common.

Article XI
ARCHITECTURAL STANDARDS

Section 1. General. No structure shall be placed, erected, or installed upon any Unit, and no construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and plantings or removal of plants, trees, or shrubs other than as may be permitted in Article XII, Section 15) shall take place except in strict compliance with this Article, until the requirements below have been fully met, and approval of the appropriate committee has been obtained pursuant to Section 2 below. No permission or approval shall be required to repaint in accordance with originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or to paint the interior of his Unit any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Unit visible from outside the Unit shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or professional building designer.

This Article shall not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 2. Architectural Review. Responsibility for administration of the Design Review Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by two committees, as described in subsections (a) and (b) of this Section 2. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

(a) **New Construction Committee.** The New Construction Committee (NCC) shall consist of at least three, but not more than five, persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until one hundred (100%) percent of the Properties have been developed and conveyed to Owners in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Board of Directors.

(b) **Modifications Committee.** The Board of Directors may establish a Modifications

Committee (MC) to consist of at least three and no more than five persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. The MC, if established, shall have exclusive jurisdiction over modifications, additions, or alterations made to existing structures on Units or structures containing Units and the open space, if any, appurtenant thereto. However, the MC may delegate its authority as to a particular Neighborhood to the appropriate board or committee of the Neighborhood Association, if any, subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The MC shall not take any action nor approve any plans which are inconsistent with the Design Review Guidelines and the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the Design Review Guidelines.

Section 3. Guidelines and Procedures.

(a) The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Review Guidelines") which shall be applicable to all construction activities within the Properties. The Design Review Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use thereof.

The NCC, acting on behalf of the Board of Directors, shall adopt such Design Review Guidelines at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The NCC shall make the Design Review Guidelines available to Owners, Builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and all such Persons shall conduct their activities in strict accordance with such Design Review Guidelines. In the discretion of the Declarant, such Design Review Guidelines may be recorded in the County Clerk Official Records of Rockwall County, Texas, in which event the recorded version, as it may unilaterally be amended from time to time by the NCC by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Review Guidelines was in effect at any particular time.

Any amendments to the Design Review Guidelines adopted from time to time by the NCC in accordance with this Section shall apply to construction and modifications commenced after the date of such amendment only, and shall not apply to require modifications to or removal of structures previously approved by the NCC or MC once the approved construction or modification has commenced.

The MC may promulgate detailed application and review procedures and design standards governing its area of responsibility and practice. Any such standards shall be consistent with those set forth in the Design Review Guidelines and shall be subject to review and approval or disapproval by the NCC.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications, shall be submitted to the appropriate committee for review and approval (or disapproval). In reviewing each submission, the committees may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. While the committees may also consider such factors as conformity to master

drainage plans, they shall not be required to review drainage plans and neither the Association, the committees, nor the Declarant assume any responsibility for ensuring compliance with any master drainage plan, which responsibility shall be solely with the Builder or other applicant.

In the event that the NCC or MC fails to approve or to disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Review Guidelines unless a variance has been granted in writing by the NCC pursuant to Section 5 below.

Section 4. No Waiver of Future Approvals. The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

Section 5. Variance. The NCC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Declaration; or (c) stop the NCC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship requiring a variance.

Section 6. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the NCC nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, appropriateness or effectiveness of drainage or compliance with any master drainage plan, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be responsible for nor held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit or for the performance or non-performance of any of the provisions of this Article XI.

Section 7. Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work or bring it into compliance. Should an Owner fail to remove or correct as required hereunder, the Board or its designees shall have the right to enter the property, remove or cure the violation. All costs (including, without limitation, attorney's fees), together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Special Assessment pursuant to Article X, Section 5(b) hereof.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Review Guidelines may be excluded by the Board from the Properties. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors and/or Declarant shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the NCC and MC.

Article XII
USE RESTRICTIONS

The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for the Declarant or the Association consistent with this Declaration, any Supplemental Declaration, and amendments to either). Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards.

Section 1. Signs. No sign of any kind shall be erected within the Properties without the written consent of the Board of Directors, except signs installed by Declarant. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering, and placement of such sign. The Board of Directors and the Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Except as provided above, no signs, flags, banners, or similar items advertising or providing directional information with respect to activities being conducted within or outside the Properties shall be displayed or posted within the Properties. However, an owner or resident may display one or more signs advertising a political candidate or ballot item for an election on the owner or resident's Unit, provided the signs: (i) are not erected, installed or displayed more than ninety (90) days before the date of the election to which the sign relates; and (ii) are removed within eleven (11) days after the date of the election to which the sign relates. Additionally, (i) any political sign must be ground-mounted and cannot exceed 4' x 6' in size; (ii) an owner or resident may not install or display more than one political sign for each candidate or ballot item; (iii) any political sign may not contain roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component, and may not involve the painting of architectural surfaces; (iv) any political sign may not be accompanied by music or other sounds or by streamers or is otherwise distracting to motorists; (v) an owner or resident may not attach a political sign in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object; and (vi) any political sign may not contain language, graphics or any display that would be offensive to the ordinary person.

Section 2. Parking and Prohibited Vehicles.

(a) **Parking.** Vehicles shall be parked only in the garages or in the driveways, if any, serving the Units or other hard-surfaced areas which are not visible from the street. Vehicles shall be subject to such reasonable rules and regulations as the Board of Directors, or any Neighborhood Association, if any, having concurrent jurisdiction over parking areas within the Neighborhood, may adopt. The Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

(b) **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board or by the Neighborhood Association, if any, having concurrent jurisdiction over parking areas within a particular Neighborhood. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for 14 consecutive

days without the prior approval of the Board. Service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed.

Section 3. Occupants Bound. All provisions of the Declaration, any applicable Supplemental Declaration, and rules and regulations which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, any applicable Supplemental Declaration, and rules and regulations. Every Owner shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration and rules and regulations.

Section 4. Animals and Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties. However, a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, fish, or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three months old. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board. If the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. All dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person. The Board shall also have the authority, but not the obligation, to restrict or prohibit the keeping of breeds of dogs with a known history of dangerous or vicious behavior.

Section 5. Quiet Enjoyment. Nothing shall be done or maintained on any part of a Unit which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Units. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

No noxious, illegal, or offensive activity shall be carried out upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Units. No outside burning of trash or garbage shall be permitted within the Properties. No speaker, horn, whistle, bell, intercom, paging or other sound device audible from outside the Unit, except alarm devices and entryway intercoms used exclusively for security purposes, shall be installed or operated on any Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Properties, except with prior approval of the Board.

Section 6. Unsightly or Unkempt Conditions. All portions of a Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored, or kept outside of enclosed structures on a Unit which, in the determination of the Board of Directors, causes an unclean, unhealthy, or untidy condition to exist or is obnoxious to the senses. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly

of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve hours.

No Person shall dump grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, street or gutter, or anywhere on the Common Areas. Such materials shall not be disposed of on any portion of the Properties without the prior permission of the owner thereof.

Section 7. Antennas. No exterior antennas except a television antenna extending no more than twelve (12) feet above roof line, aerials, satellite dishes in excess of one meter (1) in diameter, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee, unless completely contained within the dwelling on the Unit so as not to be visible from outside the dwelling. Any such apparatus permitted by the Board or its designee must be screened from view of adjacent Units by an approved fence or other approved structure no more than six feet in height. The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system or other apparatus for the transmission of television, radio, satellite, or other signals for the benefit of all or a portion of the Properties. To the extent that receipt of an acceptable signal would not be impaired, permitted antennas shall be installed behind the dwelling on the Unit or on the side of the dwelling towards the rear, screened from view by the rear yard fencing, should not be attached to the roof of the dwelling, and, to the extent reasonably practicable, integrated with the dwelling and surrounding landscape. No antennas shall be permitted to be installed for AM/FM radio, amateur (ham) radio, citizen band (CB) radio or digital audio radio services (DARS) unless required by law.

Section 8. Clotheslines, Garbage Cans, Tanks, Etc. All clotheslines, garbage cans, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. All rubbish, trash, and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate.

Section 9. Subdivision of Unit and Time Sharing. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of, and replat any Unit(s) owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

Section 10. Firearms. The discharge of firearms and use of bows and arrows within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein, the Association shall not be obligated to take action to enforce this Section.

Section 11. Pools. No above-ground swimming pools shall be erected, constructed or installed on any Unit. Jacuzzis, whirlpools, or spas approved pursuant to Article XI shall not be considered an above-ground pool for the purposes of this Section.

Section 12. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, or other surface waters within the Properties shall be installed, constructed or operated within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility. All private wells shall be subject to approval in accordance with Article XI of this Declaration.

Section 13. Tents, Mobile Homes, and Temporary Structures. Except as may be permitted by the Declarant or the NCC during initial construction within the Properties, no tent, shack, mobile home, storage shed or structure of a temporary nature shall be placed upon a unit or any part of the Properties without prior approval pursuant to Article XI hereof, except that party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

Section 14. Grading, Drainage and Septic Systems. No Person shall alter the grading of any Unit without prior approval pursuant to Article XI of this Declaration. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Properties. However, with the approval of the appropriate committee, an owner may install a rain barrel or rainwater harvesting system on the owner's Unit, so long as the device is not (i) located between the front of the owner's home and an adjoining or adjacent street; (ii) is of a color other than a color consistent with the color scheme of the owner's dwelling; or (iii) displays any language or other content that is not typically displayed by such a barrel or system as it is manufactured. The committee may regulate the size, type, and shielding of, and the materials used in the construction of, a rain barrel, rainwater harvesting device, or other appurtenance that is located on the side of a house or at any other location that is visible from a street, another Unit, or the Common Area if the restriction does not prohibit the economic installation of the device or appurtenance on the owner's Unit and there is a reasonably sufficient area on the owner's Unit in which to install the device or appurtenance.

Section 15. Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except in strict compliance with the Design Review Guidelines and upon prior approval in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required by the committee having jurisdiction to replace the removed tree with one or more comparable trees of such size and number and in such locations as such committee may determine necessary, in its sole discretion, to mitigate the damage.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 17. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Properties, except for temporary lines as required during construction and high voltage lines.

Section 18. Air Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Unit.

Section 19. Lighting. Except for traditional holiday decorative lights, which may be displayed for two months prior to and one month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article XI of this Declaration.

Section 20. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation or permanent flagpoles shall be permitted on the exterior of any portion of the Properties. No exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments, or similar items shall be permitted unless approved in accordance with Article XI of this Declaration.

Section 21. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless the device (i) is located either on the roof of the dwelling or other structure on the owner's Unit or in a fenced yard or patio on the owner's Unit. If mounted on the roof of the home, the device cannot extend higher than or beyond the roofline, and must be located in an area other than an area designated by the Association, unless the alternate location increases the estimated annual energy production of the device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the device if located in an area designated by the Association. Devices must conform to the slope of the roof and have a top edge that is parallel to the roofline, must have a frame, a support bracket, or visible piping or wiring that is in a silver, bronze, or black tone commonly available in the marketplace, and must have the prior written approval of the requisite committee. If located within a fenced yard or patio, the device cannot be taller than the fence line. No windmills, wind generators, or other apparatus for generating power from the wind shall be erected or installed on any Unit.

Section 22. Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other use thereof, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted without the prior approval of the Board of Directors. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within the Properties. No docks, piers, or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association.

Section 23. Playground and Recreational Equipment. No jungle gyms, swing sets, similar playground equipment, basketball backboards, tennis courts, or such other recreational equipment shall be erected or installed on any Unit without prior written approval in accordance with Article XI hereof. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 24. Fences. No hedges, walls, dog runs, animal pens, or fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration.

Section 25. Business Use. No business, trade, garage sale, moving sale, rummage sale, or similar activity may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or

other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

Notwithstanding the above, the leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

Section 26. On-Site Fuel Storage. No on-site storage of gasoline, heating, or other fuels shall be permitted on any part of the Properties. However, up to five gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

Section 27. Leasing of Units. All leases must comply with the Rules Regulating Leasing and Subleasing of Creekshaw Owners Association, Inc., attached hereto as Exhibit "E." The Board may adopt reasonable rules regulating leasing and subleasing.

Section 28. Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances, and rules of federal, state, and municipal governments applicable to the Properties. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, and rules.

Section 29. Single Family Occupancy. No Unit shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption, or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit; provided, however, nothing herein shall be interpreted to restrict the ability of one or more persons meeting the definition of a single family from residing with any number of person(s) under the age of eighteen (18) over whom such person has legal custody.

Section 30. Mineral Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on any Unit. No derrick or other structure designed for use in boring for water, oil, natural gas, or other minerals shall be erected and maintained or permitted on any Unit.

Article XIII EASEMENTS

Section 1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between

each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

Section 2. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property, the Association, and the designees of each (which may include, without limitation, Rockwall County, Texas and any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, these easements shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of these easements shall promptly be repaired by, and at the expense of, the Person exercising these easements. The exercise of these easements shall not unreasonably interfere with the use of any Unit.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Section 3. Easements for Lake and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon any lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any such lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of lake beds, ponds, and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain any lakes, ponds, streams, and wetlands within the Area of Common

Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural disasters.

Section 4. Easements to Serve Additional Property. The Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area for the purposes of enjoyment, use, access, and development of the additional property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant further agrees that if the easement is exercised for permanent access to the additional property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the additional property. Such agreement shall provide for sharing of costs based on the ratio which the number of residential dwellings on that portion of the additional property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Properties and on such portion of the additional property.

Section 5. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, and rules and regulations, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner except by emergency personnel acting in their official capacities.

Section 6. Retaining Walls/Drainage/Fence Easements.

(a) **Definitions.** For purposes of this Section 6, capitalized terms not previously defined in Article I shall have the meanings set forth below.

(i) "Retaining Wall" shall be a wall structure running generally parallel to the Common Boundary, constructed generally on the Common Boundary for the purposes of supporting and benefiting the Dominant Estate (See typical illustration in this Section below.)

(ii) "Common Boundary" shall be the lot line, as shown on a subdivision plat, forming the common boundary line between any two adjoining Lots, or between any Lot and Common Area.

(iii) "Dominant Estate" shall mean, as between two adjoining Units or Common Areas, the Unit or Common Area which has the higher elevation. (The Dominant Estate is defined in the illustration below on the right.)

(iv) "Servient Estate" shall mean, as between two adjoining Units or Common

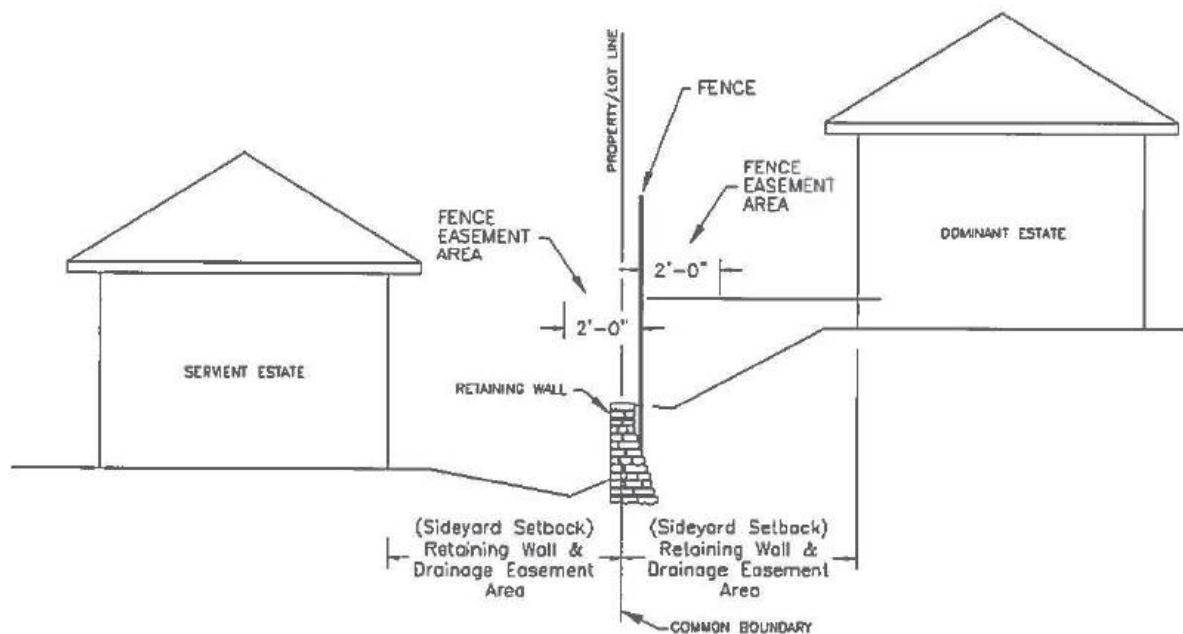
Areas, the Unit or Common Area which has the lower elevation. (The Servient Estate is defined below on the left.)

(v) "Retaining Wall and Drainage Easement Area" shall mean an area on the Servient Estate which lies between the Common Boundary and a line generally parallel to the Common Boundary equivalent to the side yard setback required as per City zoning, as shown in the illustration below.

(vi) "Fence" shall be a structure constructed on the Common Boundary, or within two feet of the Common Boundary on the Dominant Estate.

(vii) "Fence Easement Area" shall mean a two-foot area on each side of the Fence, whether the fence is located on the Common Boundary, or within the Dominant Estate.

"Illustration"



(b) Use of Retaining Wall and Drainage Easement Area. A perpetual non-exclusive easement on, over and across the Easement Area of each adjoining Servient Estate is hereby granted to each Dominant Estate for ingress and egress by the Owner and occupants of the Dominant Estate and their agents, contractors and representatives, for construction, reconstruction and maintenance of the Retaining Wall serving the Dominant Estate, and for the purpose of maintaining, reconstructing, or constructing the storm water drainage runoff system from the Dominant Estate, subject to the restrictions set forth in this Declaration and approval of the New Construction Committee (NCC), and the Modification Committee (MC).

Nothing shall be done or permitted within the Easement Area which would constitute a threat or hazard to the health and Safety of the individuals occupying the Servient Estate, nor shall anything be done or permitted within the Easement Area which defaces the dwelling or the landscaping on the Servient Estate, or which adversely affects the integrity, structure or strength of the dwelling on the

Servient Estate.

The uses permitted within each Easement Area by virtue of this Section shall be nonexclusive and the same may be subject to utility, access and drainage easements, as well as minor encroachments. The owner of the Servient Estate shall be entitled to such reasonable use or uses of the Easement Area as are not inconsistent with the rights of the Dominant Estate. In addition, the Easement Area is subject to any easements granted elsewhere in this Declaration, as it may be amended from time to time.

(c) **Rights of Entry.** The Owner of each Dominant Estate (and the authorized agents, representatives and contractors of such Owner) shall have a reasonable and temporary right of entry, access, ingress, egress and regress upon the Easement Area reasonably necessary to perform and complete, in a prompt, efficient and good workmanlike manner, any construction or other work (whether original, remodeling or repair) which has been theretofore approved by the NCC and/or MC.

The NCC and/or MC are specifically authorized to promulgate ad hoc rules and guidelines pertaining to any particular construction or repair work likely to require the exercise of the right of entry described above so that the respective best interests of the adjoining Owners are, to the extent reasonably possible, harmonized and preserved.

(d) **Maintenance of Retaining Wall and Drainage Easement Area; Damage and Destruction.** The Owner of the Servient Estate shall be responsible for maintaining landscaping, and other improvements within the Easement Area in a neat and attractive condition. Any damage to the Servient Estate caused by the Dominant Owner shall be reasonably restored at the Dominant Owner's expense to at least as good a condition as when the Dominant Owner initially entered the Servient Estate.

In the event that a Retaining Wall is damaged or destroyed by casualty, the Owner of the Dominant Estate shall proceed promptly to repair or restore the Retaining Wall in the manner consistent with its original construction.

(e) **Use of Fence Easement Area.** Any fence constructed or required to be constructed upon a Common Boundary shall be the shared maintenance responsibility of adjoining Unit Owners. Any fence constructed or required to be constructed on the Dominant Estate, due solely to the construction of a Retaining Wall along a Common Boundary, shall be the maintenance responsibility of the adjoining Unit owners.

(f) **Arbitration.** In the event of any dispute, disagreement or controversy between or among any Owners pertaining to either the Retaining Wall or Fence Easement Areas, then upon the written demand of any such Owner, the dispute, disagreement or controversy shall be fully and finally resolved in by arbitration before the Board, and, if necessary, judgment upon their decision may be entered in any court having jurisdiction thereof.

Article XIV
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage

relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration relating to such Unit or the Owner or Occupant which is not cured within 60 days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) percent of the first Mortgagees or Voting Members representing at least sixty-seven (67%) of the total Association vote entitled to cast consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration.);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First 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 Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate

reimbursement from the Association.

Section 3. Other Provisions for First Lien Holders. To the extent possible under Texas law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

Section 4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 3 (a) and (b) of this Article, or to the addition of land in accordance with Article IX.

(a) The consent of Voting Members representing at least sixty-seven (67%) of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least sixty-seven (67%) of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Members representing at least sixty-seven (67%) percent of the Class "A" votes and of the Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which at least fifty-one (51%) percent of the votes of Units subject to a Mortgage appertain, shall be required to amend materially any provisions of the Declaration or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Area;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Area;
- (vi) responsibility for maintenance and repair of the Properties;
- (vii) expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;