



number in accordance with a plat filed of record) which is held by an owner.

1.7. "Owner" means any person or entity (whether one or more) who is purchasing or has purchased under contract for deed, deed or other instrument, any parcel of the land, but owner shall not mean (i) the United States of America, the State of Texas or any municipal corporation or political subdivision or agency of the State of Texas; (ii) any person or entity holding only a lien, easement, mineral interest or royalty interest burdening such parcel; (iii) the Association; or (iv) the Grantee.

1.8. "Lot Improvement" means any improvement or landscaped area situated upon a lot held by an owner constructed in accordance with restrictions of record applicable to such lot.

ARTICLE II - ASSESSMENT OF CHARGES

2.1. The Association, by action of the Board, shall have the right to levy and collect from time to time as herein provided certain charges described hereinafter (sometimes referred to herein as "charges") against each lot to obtain such funds as the Board shall deem reasonably necessary to satisfy the purposes stated in Section 2.11 and 2.12 including reasonable reserves for contingencies and for capital improvements to common properties, replacements and repairs. Each owner of a lot, by execution of a contract for deed covering such lot, or by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such contract for deed, deed or other conveyance, shall be deemed to covenant and agree to pay the Association the charges, which shall be charged on and secured by a continuing lien on the lot against which such charges are made. Such charges, together with such interest thereon and the cost of collection thereof as are hereinafter provided for, shall also constitute the personal obligation of the owner of such lot as such charges accrue or become due and payable, notwithstanding any subsequent transfer of such lot. Such personal obligation shall not pass to such owner's successors in interest unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

2.2. In each calendar year, a charge herein sometimes called the "annual charge" shall become due and payable on such lot on December 31 of said year if collected annually or on the last day of each and every month if collected monthly, and delinquent on March 31 of the following calendar year. The amount of the annual charge if collected annually on any lot in the year in which such lot is purchased or otherwise acquired from the Grantee by the owner thereof shall be an amount which bears the same relationship to the annual charge as the remaining number of months of such year bears to twelve, commencing with the first day of the first calendar month after such purchase or acquisition. The annual charge for such year shall be due and payable on December 31 of such year and delinquent on March 31 of the following year.

2.3. The annual charge shall be levied on each lot on a uniform basis at \$ 720.00 per annum.

741

- 2.4. In addition to the annual charge authorized above, the Association may levy, in any calendar year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the owners who are voting in person or by proxy at a meeting duly called for this purpose.
- 2.5. Both annual charges and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.
- 2.6. The Board will cause to be prepared a roster of all lots showing the amount of such charges, which roster shall be kept in the office of the Association and shall be open to inspection by any owner. For a reasonable fee to be paid at the time a request is made, the Association shall furnish, upon request of any owner, a certificate in writing signed by an officer of the Association setting forth whether there are any unpaid charges against said lot and the amount of unpaid charges, if any. Such certificates shall be conclusive evidence of payment of any charge therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.
- 2.7. If the annual charge or special assessment is not paid by March 31 immediately following the December 31 on which it becomes due, such charge shall automatically (without notice) become delinquent, and together with interest at the rate of ten percent per annum from that date and the cost of collection provided for herein shall thereupon be secured by a continuing lien upon the lot against which the charge was levied, including improvements thereon, which shall bind such property in the hands of the then owner thereof, his heirs, devisees, personal representatives, successors and assigns; and the Association may bring an action at law against the owner personally obligated to pay the same or an action at law to foreclose the lien securing the charge, and there shall be added to the amount of such charge all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of court.
- 2.8. The lien securing any charge provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon any of the land subject to the charge for the purpose of securing the indebtedness incurred to purchase or improve any of such land (including any vendor's lien, right of re-entry or other remedy retained by Grantee as seller of any parcel of such land pursuant to any contract for deed covering same); provided, however, that such subordination shall apply only to the charges which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure by trustee's sale under a deed of trust, a conveyance in lieu of foreclosure or a right of re-entry or repossession by Grantee pursuant to a contract for deed. Such sale or transfer shall not release such property from liability for any charge thereafter becoming due, nor from the lien securing any such

subsequent charge. In addition to the automatic subordination provided for herein, the Association in the discretion of the Board, may subordinate the lien securing any charge provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board may determine.

2.9. Annually, the Board shall increase or decrease the annual charge set forth in Section 2.3 above by a fraction the numerator of which is the then current Engineering News Record Cost Index of the Engineering News Record (published by McGraw-Hill), or any successor index, and the denominator of which is the said Index as of June 1, 1977. In the event publication of said Index (or any successor index) is discontinued by the publisher at any time, the applicable index for determining increases or decreases hereunder shall be designated by the Board.

2.10. The Association shall not be obligated to spend in any calendar year any part of or all the funds collected in such year and shall carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the charges in the succeeding year, but shall carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

2.11. The Association shall apply requisite funds received by it, from whatever source, for the purposes set forth below:

- A. To repay all principal and interest, when due, and premium, if any, on any notes, bonds, debentures, or other evidences of indebtedness issued and sold by the Association and to meet all contractual obligations of the Association; and to pay taxes and insurance premiums;
- B. To pay all costs and expenses of the Association; and
- C. To improve, repair and maintain the capital improvements, including any fixtures and personal property located on the common property.

2.12. The Association shall apply funds received by it, from whatever source, for the benefit of the land in the manner set forth below, it being understood, however, that unless projected future revenues and funds remaining in hand are sufficient for the purposes set forth nothing herein shall require the Association to apply any funds for any of the purposes set forth below:

To improve, beautify, maintain, manage and otherwise develop the land, and to promote the recreation, health, safety, convenience and welfare of the owners by the acquisition, construction, reconstruction, alteration, enlargement, laying, renewing, replacement, repair, maintenance, operation and subsidizing of any of the following: projects, facilities, studies, programs, systems and properties relating to parks, recreational areas or services, including ponds, swimming pools, parks, tennis courts, playgrounds, trees, flowers and landscaping, fountains, benches and shelters, walkways,

763

curbing, gutters, sidewalks and streets, street lighting facilities; parking facilities; directional and information signs; and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of the owners of the land.

To maintain and repair preparatory to painting the exterior walls including trim of the residential structures situate in the community for the purpose of maintaining a uniform and orderly appearance thereto.

Nothing in this Declaration shall be construed to restrict the rights and powers of the Association to:

- (i) assign and pledge all or any part of any funds received by it from any source whatsoever; or
- (ii) enter into a contract with the holders of any notes, bonds, debentures or other evidence of indebtedness issued and sold by the Association, agreeing for the benefit of such holders
  - (a) to assess or collect the charges when the same shall become due and payable; to establish sinking funds or other security deposits; to apply all funds received by the Association first to the payment of the costs of collection and then to the payment of all principal and interest, when due, on any such evidences of indebtedness;
  - (b) to establish such collections, payments and lien enforcement procedures as may be required by such holders; and
  - (c) to provide for the custody and safeguarding of all funds received by the Association.

**ARTICLE III - RIGHTS OF ENJOYMENT IN COMMON PROPERTIES**

3.1. Subject to the provisions of Section 3.2., Grantee and every owner shall have a common right and easement of enjoyment in the common properties, and such rights shall be appurtenant to and shall pass with every lot.

3.2. The rights and easements of enjoyment created hereby in favor of Grantee and the owners shall be subject to the rights and easements now existing in favor of Grantee or others as referred to or provided for herein, and shall also be subject to the following rights of the Association:

- (i) The Association shall have the right to borrow money and in aid thereof to mortgage common properties, and the enjoyment rights granted under this Article III shall be subordinate to the rights of any such mortgagee;
- (ii) The Association shall have the right to take such steps as are reasonably necessary to

protect the common properties against a foreclosure of any such mortgage;

- (iii) The Association shall have the right to suspend the enjoyment rights of any owner for any period during which the annual charge or other amount owed by such owner to the Association remains unpaid;
- (iv) The Association shall have the right to promulgate reasonable rules and regulations governing the owners' use and enjoyment of the common properties, and to suspend the enjoyment rights of any owner for any period not to exceed sixty days for any infraction of such rules and regulations;
- (v) The Association shall have the right to assess and collect the annual charge, either monthly or annually as provided for herein, and to charge reasonable admission and other fees for the use of any facilities which are a part of the common properties and in charging such admission and other fees, to establish reasonable classifications among owners for the purpose of implementing any rules and regulations promulgated by the Association hereunder;
- (vi) The Association shall have the right to rent or lease any part of the common properties for the operation (for profit or otherwise) of any service activity intended to serve a substantial number of owners.

3.3. Subject to the provisions of (iv) and (v) above, each owner shall have the right to extend rights and easements of enjoyment vested in him hereunder to the members of his family and/or to his tenants who reside on the land and to such other persons as may be permitted by the Association.

ARTICLE IV - TERM

4.1. Except as provided in Section 4.2 below, all covenants set forth or provided for herein shall be deemed covenants running with the land and/or charges and liens upon the land and any and every conveyance or transfer of any part of the land shall be absolutely subject to said covenants whether or not it shall be so expressed in the deed, lease or other conveyance thereof. Those covenants shall continue in full force and effect until January 1, 2017, and shall automatically be extended thereafter for successive periods of ten years provided, however, that the record owners of two-thirds of the lots may revoke, amend or supplement this Declaration of Covenants at any time by executing and acknowledging an appropriate agreement or agreements, in writing, for such purpose and filing the same for record in the Office of the County Clerk of San Jacinto County, Texas.

4.2. Notwithstanding any provision of this Declaration, the right of the Association to levy and collect the charges shall not be subject to termination or reduction by any revocation, amendment or supplement of this Declaration;

465  
provided, however, that the Board shall have the authority at any time and from time to time to reduce or eliminate the assessment of the charges if the Board determines within its sole discretion that the funds received from the collection of the charges are no longer needed because (i) all obligations have been fulfilled or (ii) adequate funds are available and assured from other sources.

ARTICLE V - MISCELLANEOUS

- 5.1. It is expressly provided that Grantee shall have the right (but not the obligation) to impress the terms and charges imposed by this Declaration upon any other tracts belonging to or later acquired by the Grantee, and that the Grantor shall have the further right to apply the charges collected against the tracts described in Exhibit "A" hereto, and the charges collected against any such other tracts, for the benefit of any or all the land without distinction among tracts so long as the terms of this Declaration are otherwise complied with in such application of charges, it being understood, however, that the amounts of such charges may vary depending upon the obligation of Fairway One Homeowners Association assumed as to any property of Grantee later impressed as provided herein.
- 5.2. No change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions hereof.
- 5.3. The determination of any court that any provisions hereof are unenforceable or void shall not affect the validity of any other provision hereof.
- 5.4. The Association shall be empowered to assign its rights hereunder to any successor non-profit corporation and upon any such assignment, such successor shall have the rights and be subject to all the duties of the Association hereunder and shall be deemed to have agreed to be bound by all the provisions hereof, to the same extent as if such successor had been the original party hereto, and all references herein to the "Board" shall thereupon refer to the Board of Directors of such successor corporation. Any such assignment must be accepted by such successor corporation under written agreement pursuant to which such successor corporation expressly assumes all duties and obligations of the Association hereunder. If for any reason the Association shall cease to exist without having first assigned its rights hereunder, the covenants, easements, charges and liens imposed herein shall nevertheless continue, and any owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a non-profit corporation and assigning to it the rights of the Association hereunder.
- 5.5. All titles and headings to the Articles herein are for the purpose of reference and shall not be deemed to

limit, modify or otherwise affect any of the provisions hereof. 746

EXECUTED this 13 day of February, 1978.

FAIRWAY ONE HOMEOWNERS ASSOCIATION,

By [Signature]  
William E. Finley  
President

ATTEST:

[Signature]  
Assistant Secretary

HORIZON DEVELOPMENT CORPORATION

By [Signature]  
William E. Finley  
Vice President

ATTEST:

[Signature]  
Assistant Secretary

STATE OF TEXAS )  
                  ) ss  
COUNTY OF SAN JACINTO)

Before me, the undersigned, a Notary Public, in and for said County and State, on this day personally came and appeared William E. Finley, President of Fairway One Homeowners Association, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office, this 13th day of February, 1978.

[Signature]  
Notary Public

My commission expires:

December 1978

STATE OF )  
                  ) ss  
COUNTY OF SAN JACINTO)

Before me, the undersigned, a Notary Public, in and for said County and State, on this day personally came and appeared William E. Finley, Vice President of Horizon Development Corporation, Delaware corporation, known to me to be the person and officer



787

whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office this 13th day of February, 1978.

May A. Dunster  
Notary Public

My commission expires:

December 1978



EXHIBIT A

Fairway One - Block 1, a subdivision within San Jacinto County, Texas, according to the plat thereof on file for record in the Office of the San Jacinto County Clerk in Book 5 of Plat Records at page 2173.

FILED FOR RECORD ON the 13th day of February A.D. 1978, at 11:15 o'clock A.M.  
DULY RECORDED THIS the 17th day of February A.D. 1978, at 9:00 o'clock A.M.  
FILE NO. 741 RECORDED: VOL. 171 PAGE 779 of seq.

Anna Imogene H. Craft  
COUNTY CLERK, SAN JACINTO COUNTY, TEXAS.