

7501335

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

DEEDS

FOX RUN, SECTION ONE

THE STATE OF TEXAS
COUNTY OF MONTGOMERY

I
I

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made on the date hereinafter set forth by HORACE H. NORMAN, TRUSTEE of Harris County, Texas, and J & E BUILDING COMPANY, a Texas corporation, with its principal office in Harris County, Texas, acting herein by and through its duly authorized officers, both hereinafter referred to jointly as "DECLARANT".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Montgomery, State of Texas, and which is more particularly described as:

Field notes describing a tract of land containing 79.3434 acres, as recorded by plat in Volume 10, page 95 of the record of maps of Montgomery County, Texas and known as "Fox Run Subdivision Section One", in the Spring Creek Utility District, out of the Montgomery County School Land Survey No. 1, Abstract No. 350 and the Montgomery County School Land Survey No. 2, Abstract No. 351, in Montgomery County, Texas, said 79.3434 acre tract of land being more particularly described by metes and bounds as follows;

Commencing at the northeast corner of the Spring Forest Subdivision, Section Two, as recorded in Volume 8, page 45 of the record of maps of Montgomery County, Texas;

Thence S 53° 16' 13" E, a distance of 2232.23 feet to a 5/8-inch iron rod in the westerly right-of-way line of Rayford Road, 60.00 feet wide and in the center-line of a Texas-Illinois Natural Gas Pipeline Co. Easement, as recorded in Volume 301, page 336, of the Montgomery County Deed Records, which marks the most northerly corner and PLACE OF BEGINNING of this herein described 79.3434 acres;

THENCE S 29° 30' 46" E along the aforementioned westerly right-of-way line of Rayford Road, at 50.00 feet, passing the southerly line of the previously mentioned Texas-Illinois Natural Gas Pipeline Co. Easement, continuing in all for 220.00 feet to a 5/8-inch iron rod;

THENCE N 74° 31' 30" W for 14.14 feet to a 5/8-inch iron rod;

THENCE S 60° 28' 30" W for 130.00 feet to a 5/8-inch iron rod;

THENCE S 29° 30' 46" E for 1636.78 feet to a 5/8-inch iron rod;

THENCE S 60° 29' 14" W for 68.83 feet to a 5/8-inch iron rod;

THENCE S 29° 30' 46" E at 130.95 feet passing the northerly line of the Trunkline Gas Co. Easement, 60.00 feet wide, continuing in all a distance of 161.62 feet to a 5/8-inch iron rod in the center-line of the said easement, which marks the most easterly corner of this herein described 79.3434 acres;

THENCE along the center-line of the above mentioned Trunkline Gas Co. Easement and also the most southerly line of the 79.3434 acre tract being described as follows:

S 72° 16' 30" W for 765.54 feet to a 5/8-inch iron rod;

S 72° 49' 16" W for 282.02 feet to a 5/8-inch iron rod;

S 69° 13' 30" W for 480.82 feet to a 5/8-inch iron rod;

S 76° 16' 00" W for 402.17 feet to a 5/8-inch iron rod;

S 72° 49' 50" W for 450.20 feet to a 5/8-inch iron rod;

S 72° 25' 34" W for 57.47 feet to a 5/8-inch iron rod for most southerly corner of this tract of 79.3434 acres;

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy I hereby certify as same appears in Vol 880 Page 757 the DEED records in the County Clerk's Office in Montgomery County, Tex



ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

By: [Signature] Dept

THENCE along the westerly boundary of this 79.3434 acre tract as follows:

N 17° 43' 30" W at 30.00 feet, passing the northerly line of the aforementioned Trunkline Gas Co. Easement, continuing in all a distance of 130.04 feet to a 5/8-inch iron rod;

S 72° 16' 30" W for 25.00 feet to a 5/8-inch iron rod;
 N 17° 43' 30" W for 60.00 feet to a 5/8-inch iron rod;
 N 09° 00' 13" W for 185.51 feet to a 5/8-inch iron rod;
 N 20° 38' 22" E for 174.37 feet to a 5/8-inch iron rod;
 N 30° 24' 02" E for 387.32 feet to a 5/8-inch iron rod;
 N 21° 07' 22" E for 321.60 feet to a 5/8-inch iron rod;
 N 16° 25' 38" E for 60.03 feet to a 5/8-inch iron rod;
 N 10° 57' 12" E for 384.75 feet to a 5/8-inch iron rod;
 N 02° 01' 05" E at 282.90 feet, passing the southerly line of the previously mentioned Texas-Illinois Natural Gas-Co. Easement, continuing a total distance of 341.23 feet to a 5/8-inch iron rod in the center-line of said easement which marks the most northwesterly corner of this tract of 79.3434 acres of land;

THENCE N 60° 28' 30" E along the above mentioned center-line of the Texas-Illinois Natural Gas Pipeline Co. Easement and the northerly line of this herein described tract of 79.3434 acres, a distance of 1323.38 feet to the PLACE OF BEGINNING.

being known as FOX RUN, SECTION ONE, a subdivision within the County of Montgomery, State of Texas, according to the map or plat thereof recorded in Volume 10, page 95 of the Map Records of Montgomery County, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold 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 and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to FOX RUN MAINTENANCE ASSOCIATION, a Texas Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The mortgagee shall not be considered as an Owner unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

NONE

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map or plat of the Properties with the exception of the Common Area, Reserves and drill sites, if any.

Section 6. "Declarant" shall mean and refer to HORACE H. NORMAN, TRUSTEE, and the J & E BUILDING COMPANY, their successors and assigns if such successors or assigns acquire more than two (2) undeveloped Lots from the Declarant for the purposes of development.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy, I hereby certify as the same appears in Vol 880 Page 758 of the DEED records in the County Clerk's Office in Montgomery County, Texas.

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ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

By: Patricia Pearson Deputy

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot; subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational or other facilities owned or operated by the Association, excluding domestic water, (if any), by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of Owners.

(e) The right of the Association, in accordance with its Articles of Incorporation or Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. The use of all parking areas situated in the Common Area shall be subject to the exclusive control and management of the Board of Directors of the Association, including the assignment of areas where guests, boats, trailers, etc., may or may not be parked or stored.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

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

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY
A true and correct copy, I hereby certify
same appears in Vol 880 Page 25
the DEED records in the
Clerk's Office in Montgomery County,



ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

By [Signature] D

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1979.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee due. The personal obligation for delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association or its Board of Directors shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner the maximum annual assessment shall be \$125.00 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% (such percentage increase may be cumulative from year to year) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by the vote or written assent of a majority of each class of members.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of a majority of each class of members.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY
A true and correct copy I hereby certify as the same appears in Vol 880 Page 760 of the DEED records in the County Clerk's Office in Montgomery County, Texas.



ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY
By: R. Harris Deputy

Section 5. Notice and Quorum For Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present; another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Annual assessments shall be made for Lots with completed houses not owned by the Declarant, Lots with completed but unoccupied houses owned by the Declarant, Lots with houses under construction, and for vacant Lots. Lots with completed houses owned by the Declarant and which are unoccupied shall be assessed (until initially occupied) at one-half (1/2) of the assessment for the Lots with completed houses and owned by parties other than the Declarant; Lots with houses under construction shall be assessed one-third (1/3) of the assessment for Lots with completed houses; and vacant Lots shall be assessed at one-fourth (1/4) of the assessment for Lots with completed houses.

Section 7. Date of Commencement of Annual Assessment Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month more than thirty (30) days following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Board of Directors, for the Association, may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, through its Board of Directors, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy I hereby certify as the same appears in Vol 883 Page 761 of the DEED records in the County Clerk's Office in Montgomery County, Texas.

ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY



By *John Deane* Deputy

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner hereby agrees to be bound by the terms and conditions of all management agreements, if any, entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of sixty (60%) percent of the votes of each class of the members of the Association. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of the responsibilities of the Association.

Section 12. Insurance - Common Area Buildings. The Board of Directors shall at all times keep the buildings and other structures in the Common Area, including the contents of same, insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of Texas, in an amount as near as practicable to the full replacement value thereof without deduction for depreciation. All cost for such insurance shall be a common expense of all Owners and be a part of the maintenance assessment.

Section 13. Insurance - Common Area General Liability. The Board of Directors as part of the maintenance assessment, shall also effect and maintain at all times comprehensive general liability insurance covering the Association, its Board of Directors, officers, employees and agents with respect to the Common Area in a responsible insurance company with minimum limits of not less than \$300,000 for injury to one person and \$500,000 for injury to more than one person in any one accident or occurrence and \$50,000 for property damage, and without prejudice to the right of any Owner to maintain additional liability insurance for his respective Lot.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

USE RESTRICTIONS

The Lots and the Common Area shall be occupied and used as follows:

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed two stories in height and a private garage for not less than two nor more than four passenger type automobiles.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY
A true and correct copy, I hereby certify as the same appears in Vol 880 Page 762 of the DEED records in the County Clerk's Office in Montgomery County, Texas.

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ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

By: *Fatoua* Deputy

Section 2. Dwelling Size. The habitable area of the main dwelling measured to outside of walls, exclusive of open porches, garage(s), carport(s), portecochere and roof overhangs, shall be not less than the following: On all residential Lots dwelling shall contain a minimum of 1200 sq. ft. if the dwelling is a one-story building. A minimum of 900 sq. ft. on the ground floor if the dwelling is a two-story building. All two stories to have a minimum of 1500 sq. ft. including both floors. These minimum restrictions apply to all Lots, SAVE AND EXCEPT the following Lots: Lot 1, Blk. 14; Lots 1-15, Blk. 15, both inclusive; Lot 1-13, Blk. 13, both inclusive; Lots 1-14, Blk. 12, both inclusive; Lots 37-39, Blk. 12, both inclusive. On these lots a one-story dwelling shall contain a minimum of 1,000 sq. ft.

Section 3. Building Location.

a. No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

b. No building shall be located nearer than 5 feet to an interior lot line, except that a 3-foot side yard shall be permitted for a detached garage or other permitted detached accessory building located 30 feet or more from the front minimum building setback line. In no event are building improvements to be erected on or within utility easements. No habitable portion of a dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line.

c. Residences on corner lots shall face the street on which the Lot has a building setback line of 20 feet.

d. In the case of a garage facing the side street of a corner lot, the automobile entrance to the garage shall be not less than 10 feet from the side street property line.

e. No portecochere shall be placed or maintained nearer to a street than the minimum building setback lines, nor nearer to any other lot line than five (5) feet. No portecochere shall be permitted on any Lot which does not have a usable garage for at least one automobile. For the purposes of these covenants, carports shall be considered as garages and shall comply with all requirements for garages.

f. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 4. Building Materials.

a. Walls and roofs of garages, carports, and porte cocheres, attached to the residence, shall be constructed of the same materials used on the walls and roof of the residence.

b. The exterior wall area of the residence shall not be less than fifty-one percent (51%) masonry or masonry veneer construction. In determining this required area, the area of all gables, windows and door openings shall be excluded from this required area. In the event of an attached garage, its exterior wall area shall be included in the determination of the required masonry or masonry veneer area. The Architectural Control Committee may waive this masonry requirement, if in its opinion, this masonry requirement would be a substantial detriment to the design of the proposed residence and would not materially effect neighboring residences in an adverse manner.

c. Driveways shall be constructed of concrete and have a minimum width of nine (9) feet. The street curb shall be broken in such a manner that the joint at the street pavement and the driveway will not have an unsightly appearance.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy, I hereby certify as the same appears in Vol 880 Page 763 of the D.E.E.'s records in the County Clerk's Office in Montgomery County, Texas.



BOY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

BY *[Signature]* Deputy

d. Walks from the street curb to the residence shall be constructed of concrete or masonry materials and shall have a minimum width of three (3) feet.

Section 5. Public Walks. Before the initial dwelling unit is completed the Lot Owner shall construct a concrete sidewalk in the street right-of-way parallel to the street curb and two (2) feet from the street right-of-way line(s) four (4) feet in width, and said sidewalk shall extend to the projection of the Lot boundary lines into the street right-of-way and/or street curbs at corner lots. Installation and route of the sidewalks may be altered, in the event the Architectural Committee approves the new location.

Section 6. Lot Area and Width. No dwelling shall be erected or placed on any Lot having a width of less than 40 feet at the minimum building setback line nor shall any dwelling be erected or placed on any Lot having an area of less than 6,000 sq. ft., however, this covenant shall not preclude the erection of a dwelling on any Lot as designated on the recorded plat.

Section 7. Utility Easements. Easements, as shown on the recorded plat, and right of entry to them, for installation and maintenance of utilities and drainage facilities are reserved. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or operation of utilities. The easement area of each lot and all improvements in it shall be maintained by the Owner of the Lot, except those improvements of a public authority or utility shall be maintained by such authority or utility. The title to a lot shall not include title to any utility facility located within easements or streets. Neither the Declarant, their successors or assigns, nor the operator of any public utility, shall be liable for damage to any plants, structure or buildings located in or on such easements or streets because of the installation or maintenance of the utility facilities.

Section 8. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No boat, trailer or truck shall be parked or stored in front of any dwelling unit for more than 48 hours. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area.

Section 9. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servants quarters or other out buildings shall be used on any Lot at any time as a residence either temporarily or permanently; nor shall any used structure be moved onto any Lot. During the construction and sales period of the initial dwelling units, the builder may erect and maintain such structures as is customary in connection with such construction and sale of such property, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales offices.

Section 10. Signs. No sign of any kind shall be displayed to public view on any Lot or building except one sign of not more than five (5) square feet in area advertising the merits of the property for sale or rent. During the construction and initial sales period of the dwelling units the builder may use other signs and displays to advertise the merits of the property for sale or rent.

Section 11. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY.

A true and correct copy, I hereby certify as the same appears in Vol. 880 Page 764 of the DEED records in the County Clerk's Office in Montgomery County, Texas.



ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY.

By: Patsy Dean Deputy

Section 12. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purpose.

Section 13. Garbage and Refuse Disposal. No Lot shall be used or maintained as dumping ground for rubbish. Trash, garbage, or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All incinerators or other equipment for the storage or disposal of such materials shall be kept in clean and sanitary conditions.

Section 14. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 15. Sewage Treatment. No sewage treatment system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 17. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be permitted in the Common Area.

Section 18. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 19. Annoyance. No activity shall be carried on upon any Lot or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Property as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit.

Section 20. Sales Office. A Construction and/or Sales Offices may be built and used on any Lot or Lots in this subdivision by Declarant, until all Lots in the Property are sold.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions by this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during its first term by an instrument signed by the Owners of not less than seventy-five (75%)

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY
A true and correct copy of hereby certify as the same appears in Vol 880 Page 765 of the D.E.P records in the County Clerk's Office in Montgomery County, Texas.

ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY




percent of the Lots; and thereafter by an instrument signed by the Owners of not less than sixty (60%) percent of the Lots; provided any amendment be recorded in the Deed Records of Harris County, Texas.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members. However, upon submission and approval by FHA/VA of a general plan of the entire development and approval of each stage of development such additional stages of development may be annexed by the Developer without such approval by the membership.

Section 5. FHA/VA. As long as there is a Class B. membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 13 day of Jan, 1975.

J & E BUILDING COMPANY

ATTEST:  Mervin J. Brundage
Secretary

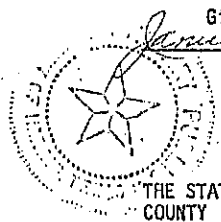
By: Earl M. Gilbert
Earl M. Gilbert, President

Horace H. Norman
Horace H. Norman, Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared EARL M. GILBERT, President of J & E Building Company, a corporation, known to me to be the person 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 on this the 13 day of January, 1975.

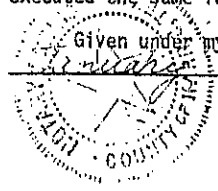


Lyndal J. Williams
Notary Public in and for Harris County, Texas.

THE STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared HORACE H. NORMAN, Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 13 day of January, 1975.



Patricia A. Aldt
Notary Public in and for Harris County, Texas.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy, I hereby certify as the same appears in Vol 880 Page 766 of the DEED records in the County Clerk's Office in Montgomery County, Texas.

ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY
R. Harris

THE UNDERSIGNED, Owners of some of the Lots in the herein described Subdivision, do hereby consent and agree to these restrictions being placed of record and being enforced in the manner set forth therein.

Earl Gilbert
Earl Gilbert



[Signature]
Assistant Secretary

[Signature]
Secretary

EAGAN HOMES, INCORPORATED

By J. C. Eagan
J. C. Eagan, President

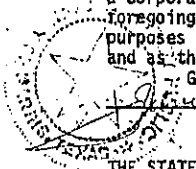
MONTGOMERY COUNTY HOMES, INC.

By Milton L. Emmick
Milton L. Emmick, President

THE STATE OF TEXAS
COUNTY OF

BEFORE ME, the undersigned authority, on this day personally appeared Milton L. Emmick, President of MONTGOMERY COUNTY HOMES, INC., a corporation, known to me to be the person 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 on this the 20 day of January, 1975.



THE STATE OF TEXAS
COUNTY OF HARRIS

Terry L. Perkins
Notary Public in and for Harris County, Texas.

BEFORE ME, the undersigned authority, in and for said County, Texas, on this day personally appeared EARL GILBERT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 13 day of January, 1975.



THE STATE OF TEXAS
COUNTY OF

Ladd J. Williams
Notary Public in and for Harris County, Texas.

BEFORE ME, the undersigned authority, on this day personally appeared J. C. Eagan, President of EAGAN HOMES, INCORPORATED, known to me to be the person 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 on this the 20 day of January, 1975.



ROY HARRIS
COUNTY CLERK
COUNTY OF MONTGOMERY

Filed for Record at 10 o'clock A.M. 1-23-75 ROY HARRIS
Clerk County Court, Montgomery Co., Texas [Signature] Deputy

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY

A true and correct copy, I hereby certify as the same appears in Vol 88 Page 767 of the INDEXED records in the County Clerk's Office in Montgomery County, Texas.



By [Signature] Deputy

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOX RUN, SECTION TWO AND SECTION FOUR

7713620

THE STATE OF TEXAS
 COUNTY OF MONTGOMERY

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made on the date hereinafter set forth by HORACE H. NORMAN, TRUSTEE of Harris County, Texas, and J & E BUILDING COMPANY, a Texas corporation, with its principal office in Harris County, Texas, acting herein by and through its duly authorized officers, both hereinafter referred to jointly as "DECLARANT".

WHEREAS, Declarant is the owner of certain property in the County of Montgomery, State of Texas, and which is more particularly described as:

FOX RUN, SECTION TWO, a subdivision within the County of Montgomery, State of Texas, containing 54.5337 acres, according to the map or plat thereof recorded in Cabinet "B" Page 30 of the Map Records of Montgomery County, Texas.

FOX RUN, SECTION FOUR, a subdivision within the County of Montgomery, State of Texas, containing 9.3507 acres, according to the map or plat thereof recorded in Cabinet "B" Page 30 of the Map Records of Montgomery County, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold 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 and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to FOX RUN MAINTENANCE ASSOCIATION, a Texas Non-Profit Corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The mortgagee shall not be considered as an Owner unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

NONE

Section 5. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map or plat of the Properties with the exception of the Common Area, Reserves and drill sites, if any.

Section 6. "Declarant" shall mean and refer to HORACE H. NORMAN, TRUSTEE, and the J & E BUILDING COMPANY, their successors and assigns if such successors or assigns acquire more than two (2) undeveloped Lots from the Declarant for the purposes of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the recreational or other facilities owned or operated by the Association, excluding domestic water, (if any), by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

(c) The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(d) The right of the Association to limit the number of guests of Owners.

(e) The right of the Association, in accordance with its Articles of Incorporation or Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. The use of all parking areas situated in the Common Area shall be subject to the exclusive control and management of the Board of Directors of the Association, including the assignment of areas where guests, boats, trailers, etc., may or may not be parked or stored.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

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

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on December 31, 1979.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in the title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association or its Board of Directors shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner the maximum annual assessment shall be \$125.00 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by the vote or written assent of a two-thirds (2/3) majority of each class of members.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) majority of each class of members.

Section 5. Notice and Quorum For Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. Annual assessments shall be made for Lots with completed houses not owned by the Declarant, Lots with completed but unoccupied houses owned by the Declarant, Lots with houses under construction, and for vacant Lots. Lots with completed houses owned by the Declarant and which are unoccupied shall be assessed (until initially occupied) at one-half (1/2) of the assessment for the Lots with completed houses and owned by parties other than the Declarant; Lots with houses under construction shall be assessed one-third (1/3) of the assessment for Lots with completed houses; and vacant Lots shall be assessed at one-fourth (1/4) of the assessment for Lots with completed houses.

Section 7. Date of Commencement of Annual Assessment Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month more than thirty (30) days following the conveyance of the first lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Board of Directors, for the Association, may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, through its Board of Directors, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including judicial foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 11. Management Agreements. Each Owner hereby agrees to be bound by the terms and conditions of all management agreements, if any, entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled by an affirmative vote of sixty (60%) percent of the votes of each class of the members of the Association. Any and all management agreements shall be made with a responsible party or parties having experience adequate for the management of the responsibilities of the Association.

Section 12. Insurance - Common Area Buildings. The Board of Directors shall at all times keep the buildings and other structures in the Common Area, including the contents of same, insured against loss or damage by fire with extended coverage in an insurance company authorized to do business in the State of Texas, in an amount as near as practicable to the full replacement value thereof without deduction for depreciation. All cost for such insurance shall be a common expense of all Owners and be a part of the maintenance assessment.

Section 13. Insurance - Common Area General Liability. The Board of Directors as part of the maintenance assessment, shall also effect and maintain at all times comprehensive general liability insurance covering the Association, its Board of Directors, officers, employees and agents with respect to the Common Area in a responsible insurance company with minimum limits of not less than \$300,000 for injury to one person and \$500,000 for injury to more than one person in any one accident or occurrence and \$50,000 for property damage, and without prejudice to the right of any Owner to maintain additional liability insurance for his respective Lot.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

USE RESTRICTIONS

The Lots and the Common Area shall be occupied and used as follows:

Section 1. Land Use and Building Type. No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling, not to exceed two stories in height and a private garage for not less than two nor more than four passenger type automobiles.

Section 2. Dwelling Size. The habitable area of the main dwelling measured to outside of walls, exclusive of open porches, garage(s), carport(s), portecochere and roof overhangs, shall be not less than the following: On all residential Lots dwelling shall contain a minimum of 1200 sq. ft. if the dwelling is a one-story building. A minimum of 900 sq. ft. on the ground floor if the dwelling is a two-story building. All two stories to have a minimum of 1500 sq. ft. including both floors. These minimum restrictions apply to all Lots, SAVE AND EXCEPT all Lots in Section IV in accordance with the plat thereof recorded in Volume Page of the Map Records of Montgomery County, Texas. On these lots a one-story dwelling shall contain a minimum of 1,000 sq. ft.

Section 3. Building Location.

- a. No building shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded plat.
- b. No building shall be located nearer than 5 feet to an interior lot line, except that a 3-foot side yard shall be permitted for a detached garage or other permitted detached accessory building located 30 feet or more from the front minimum building setback line. In no event are building improvements to be erected on or within utility easements. No habitable portion of a dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line.
- c. Residences on corner lots shall face the street on which the Lot has a building setback line of 20 feet.
- d. In the case of a garage facing the side street of a corner lot; the automobile entrance to the garage shall be not less than 10 feet from the side street property line.
- e. No portecochere shall be placed or maintained nearer to a street than the minimum building setback lines, nor nearer to any other lot line than five (5) feet. No portecochere shall be permitted on any Lot which does not have a usable garage for at least one automobile. For the purposes of these covenants, carports shall be considered as garages and shall comply with all requirements for garages.
- f. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 4. Building Materials.

- a. Walls and roofs of garages, carports, and porte cocheres, attached to the residence, shall be constructed of the same materials used on the walls and roof of the residence.
- b. The exterior wall area of the residence shall not be less than fifty-one percent (51%) masonry or masonry veneer construction. In determining this required area, the area of all gables, windows and door openings shall be excluded from this required area. In the event of an attached garage, its exterior wall area shall be included in the determination of the required masonry or masonry veneer area. The Architectural Control Committee may waive this masonry requirement, if in its opinion, this masonry requirement would be a substantial detriment to the design of the proposed residence and would not materially effect neighboring residences in an adverse manner.
- c. Driveways shall be constructed of concrete and have a minimum width of nine (9) feet. The street curb shall be broken in such a manner that the joint at the street pavement and the driveway will not have an unsightly appearance.

d. Walks from the street curb to the residence shall be constructed of concrete or masonry materials and shall have a minimum width of three (3) feet.

Section 5. Public Walks. Before the initial dwelling unit is completed the Lot Owner shall construct a concrete sidewalk in the street right-of-way parallel to the street curb and two (2) feet from the street right-of-way line(s) four (4) feet in width, and said sidewalk shall extend to the projection of the Lot boundary lines into the street right-of-way and/or street curbs at corner lots. Installation and route of the sidewalks may be altered, in the event the Architectural Committee approves the new location.

Section 6. Lot Area and Width. No dwelling shall be erected or placed on any Lot having a width of less than 40 feet at the minimum building setback line nor shall any dwelling be erected or placed on any Lot having an area of less than 6,000 sq. ft., however, this covenant shall not preclude the erection of a dwelling on any Lot as designated on the recorded plat.

Section 7. Utility Easements. Easements, as shown on the recorded plat, and right of entry to them, for installation and maintenance of utilities and drainage facilities are reserved. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or operation of utilities. The easement area of each lot and all improvements in it shall be maintained by the Owner of the Lot, except those improvements of a public authority or utility shall be maintained by such authority or utility. The title to a lot shall not include title to any utility facility located within easements or streets. Neither the Declarant, their successors or assigns, nor the operator of any public utility, shall be liable for damage to any plants, structure or buildings located in or on such easements or streets because of the installation or maintenance of the utility facilities.

Section 8. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Owners. No boat, trailer or truck shall be parked or stored in front of any dwelling unit for more than 48 hours. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area.

Section 9. Temporary Structures. No structures of a temporary character, trailer, basement, tent, shack, barn, servants quarters or other out buildings shall be used on any Lot at any time as a residence either temporarily or permanently; nor shall any used structure be moved onto any Lot. During the construction and sales period of the initial dwelling units, the builder may erect and maintain such structures as is customary in connection with such construction and sale of such property, including, but without limitation, a business office, storage area, construction yards, signs, model units and sales offices.

Section 10. Signs. No sign of any kind shall be displayed to public view on any Lot or building except one sign of not more than five (5) square feet in area advertising the merits of the property for sale or rent. During the construction and initial sales period of the dwelling units the builder may use other signs and displays to advertise the merits of the property for sale or rent.

Section 11. Oil and Mining Operations. No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot.

Section 12. Livestock and Poultry. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purpose.

Section 13. Garbage and Refuse Disposal. No Lot shall be used or maintained as dumping ground for rubbish. Trash, garbage, or other waste shall be kept screened by adequate planting or fencing so as to conceal them from public view. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All incinerators or other equipment for the storage or disposal of such materials shall be kept in clean and sanitary conditions.

Section 14. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 15. Sewage Treatment. No sewage treatment system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 17. Insurance. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be permitted in the Common Area.

Section 18. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 19. Annoyance. No activity shall be carried on upon any Lot or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Property as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit.

Section 20. Sales Office. A Construction and/or Sales Offices may be built and used on any Lot or Lots in this subdivision by Declarant, until all Lots in the Property are sold.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration and Amendment. The covenants and restrictions by this Declaration shall run with and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during its first term by an instrument signed by the Owners of not less than seventy-five (75%)

percent of the Lots; and thereafter by an instrument signed by the Owners of not less than sixty (60%) percent of the Lots; provided any amendment be recorded in the Deed Records of Harris County, Texas.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members. However, upon submission and approval by FHA/VA of a general plan of the entire development and approval of each stage of development such additional stages of development may be annexed by the Developer without such approval by the membership.

Section 5. FHA/VA. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 25 day of April, 1977.

J & E BUILDING COMPANY

ATTEST:

Martin J. Bendler
Secretary

By: *Earl M. Gilbert*
Earl M. Gilbert, President

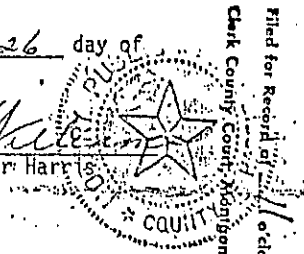
Horace H. Norman
Horace H. Norman, Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared EARL M. GILBERT, President of J & E Building Company, a corporation, known to me to be the person 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 on this the 26 day of April, 1977.

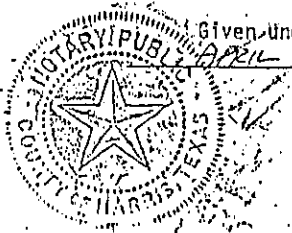
Lynell J. White
Notary Public in and for Harris County, Texas.



THE STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared HORACE H. NORMAN, Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this the 25th day of April, 1977.



James E. Bricker
Notary Public in and for Harris County, Texas.

Filed for Record at 11 o'clock A.M. 5-2-77
Clerk County Court, Montgomery Co., Texas by *Richard Miller* Deputy
NOT HARRIS

office copy

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8036859

041-01-0218

REAL PROPERTY RECORDS

AMENDMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOX RUN SUBDIVISION
SECTIONS ONE, TWO, THREE AND FOUR
MONTGOMERY COUNTY, TEXAS

THE STATE OF TEXAS X
 KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY X

THIS AMENDMENT OF DECLARATION, made on the day and year be-
low written, by and through the signatory owners hereto:

W I T N E S S E T H:

WHEREAS, by document dated January 13, 1975, entitled
"Declaration of Covenants, Conditions and Restrictions, FOX RUN,
Section One " (said document, together with the Declaration for
FOX RUN, Sections Two and Four described hereinbelow, collectively,
referred to as "Declaration"), and filed in Volume 880, Pages
757-767 of the Deed Records of Montgomery County, Texas, the
former owners of the following described real property in the
County of Montgomery, State of Texas, imposed, subjected and bur-
dened said property with various covenants, conditions, and
restrictions running with the land, said property being des-
cribed as follows, to-wit:

FOX RUN, SECTION ONE, a subdivision within the
County of Montgomery, State of Texas, according
to the map or plat thereof recorded in Volume
10, Page 95 of the Map Records of Montgomery
County, Texas.

WHEREAS, by document dated April 25, 1977, and entitled
"Declaration of Covenants, Conditions and Restrictions, FOX RUN,
Section Two and Section Four" filed in Volume 989, Pages 504-512
of the Deed Records of Montgomery County, Texas, the former
owners of the following described real property in the County
of Montgomery, State of Texas, imposed, subjected and burdened
said property with various covenants, conditions and restrictions
running with said land, said property being described as follows,
to-wit:

FOX RUN, SECTION TWO, a subdivision within the County
of Montgomery, State of Texas, containing 54.5337 acres,
according to the map or plat thereof recorded in
Cabinet "B", Page 30 of the Map Records of Montgomery
County, Texas.

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FOX RUN, SECTION FOUR, a subdivision within the County of Montgomery, State of Texas, containing 9.3507 acres, according to the map or plat thereof recorded in Cabinet "B", Page 30 of the Map Records of Montgomery County, Texas.

WHEREAS, each of said Declarations provides for the amendment thereof by instrument signed by the Owners of not less than seventy-five (75%) per cent of the Lots in said subdivision; and,

WHEREAS, by specific reference to the Declarations governing FOX RUN, Section One, and described hereinabove, each Warranty Deed to the current owners of FOX RUN, Section Three, Montgomery County, Texas, has incorporated by reference all of the terms and conditions of said Declaration, thereby burdening and restricting all of the property described as follows, to-wit:

FOX RUN, SECTION THREE, a subdivision within the County of Montgomery, State of Texas; and,

WHEREAS, the Owners of seventy-five (75%) per cent of the Lots in FOX RUN, Sections One, Two, Three and Four, wish to amend the Declaration by adding two (2) provisions, the first of which is directed to the prohibition of the use of any type of fireworks within the property governed by the Declarations, and the second of which is directed at the restriction and confinement of dogs within said property:

NOW, THEREFORE, upon the execution, acknowledgement and recordation of this document by the Owners of seventy-five (75%) per cent of the Lots in the subject subdivision, or a total of at least 482 Lots, the Declarations shall be, ipso facto, amended by adding the following as Section 21 and Section 22 to Article VI of said Declarations, to-wit:

"Section 21. No dog or dogs shall be allowed or permitted on the Lots, Common Areas or anywhere on the Properties unless such dog or dogs shall be confined within a residence or fenced area (including yard, dog run, or pen) or unless such dog or dogs shall be controlled by leash, rope, chain, or other restraining device."

"Section 22. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere on the Properties. For purposes of this section "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise, or smoke."

Me

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254-01-0946

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CERTIFICATE OF ANNEXATION
FOX RUN SECTION FOUR (4)

REAL PROPERTY RECORDS

THE STATE OF TEXAS : KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY :

WHEREAS, under County Clerk's File No. 7501335 of the
Official Public Records of Real Property of Montgomery County,
Texas, there has been recorded restrictive covenants covering
Fox Run, Section One (1), as shown by the plat thereof recorded
in Volume 10, Page 95, of the Map Records of Montgomery County,
Texas; and-

WHEREAS, under County Clerk's File No. 7773020 of the Official
Public Records of Real Property of Montgomery County, Texas, there
has been recorded restrictive covenants covering Fox Run, Section
Four (4), as shown by plat thereof recorded in Cabinet B, Sheet 30,
of the Map Records of Montgomery County, Texas; and-

WHEREAS, each of the two above-mentioned instruments, being
restrictive covenants, covering a section of Fox Run (hereinafter
collectively called the "Fox Run Restrictions") provides for, and
there was created, the Fox Run Maintenance Association, (herein-
after called "Association") as a Texas non-profit corporation to
serve as the homeowners association, with duties as provided in its
charter and in the Fox Run Restrictions; and-

WHEREAS, Article I, Section 3, of the Fox Run Restrictions
reads as follows:

" 'Properties' shall mean and refer to that certain real
property hereinbefore described, and such additions
thereto as may hereafter be brought within the jurisdic-
tion of the Association." (emphasis added); and-

WHEREAS, Article VII, Section 4, of the Fox Run Restrictions
reads as follows:

" Annexation. Additional residential property and Common
Area may be annexed to the Properties with the consent
of two-thirds (2/3) of each class of members. However,
upon submission and approval by FHA/VA of a general plan

254-01-0948

The undersigned, respectively, do hereby acknowledge that the annexation of the properties described in the attached Exhibit "A" is in accordance with the general plan of development heretofore and hereby approved by each of them.

VETERANS ADMINISTRATION

By: Thos. L. Stafford

FEDERAL HOUSING ADMINISTRATION

By: J. [Signature]

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared HARVIN J. BENDALE and EARL C. GILBERT and JAMES RIVARD, as the Board of Directors of the San Antonio Maintenance Association, a Texas non-profit corporation, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they 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 on this 3rd day of January, 1984.

Lynell J. Mason
Notary Public, State of Texas
My commission expires 9-26-85

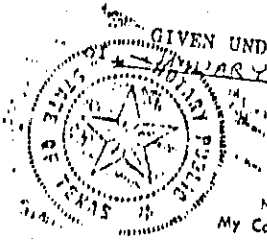


254-01-0949

THE STATE OF TEXAS :
COUNTY OF HARRIS :

BEFORE ME, the undersigned authority, on this day personally appeared Amil C. Stafford as CHIEF CONSTRUCTION AND VALUATION of the VETERANS ADMINISTRATION, known to me to be the person 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 Administration or corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 24th day of February, 1981.



G. M. [Signature]
Notary Public/State of Texas
My Commission Expires March 12, 1984

[Signature]
Notary Public/State of Texas
My commission expires:
March 12, 1981

THE STATE OF TEXAS :
COUNTY OF HARRIS :

BEFORE ME, the undersigned authority, on this day personally appeared James D. Wilson as Manager of the FEDERAL HOUSING ADMINISTRATION, known to me to be the person 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 Administration or corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 17th day of January, 1981.



Patricia H. [Signature]
Notary Public/State of Texas
My commission expires:
10-14-81

254-01-0950

EXHIBIT "A"

Block Twenty-three (23), Lots Twenty (20) through Thirty-nine (30), inclusive;

Block Twenty-four (24), Lots One (1) through Twenty (20), inclusive;

Block Thirteen (13), Lots Twenty-nine (29) through Thirty-two (32) inclusive.

All of said Blocks and Lots being in Fox Run Section Four (4), according to the map or plat thereof recorded in Cabinet B, Sheet 30, of the Map Record Cabinets of Montgomery County, Texas.

FILED FOR RECORD
1984 FEB -7 PM 11:33
Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in the Public Records on the date and at the time stamped hereon by me, and on July 28, 1984, in the official Public Records of Real Property of Montgomery County, Texas.

FEB 7 1984



Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

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SECOND AMENDMENT
to
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
FOX RUN SUBDIVISION, SECTIONS TWO (2) AND FOUR (4)

THE STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF MONTGOMERY §

WHEREAS, HORACE H. NORMAN, TRUSTEE, and J & E BUILDING COMPANY, "Declarants," heretofore executed that certain Declaration of Covenants, Conditions and Restrictions Fox Run, Section Two and Section Four recorded May 2, 1977, under County Clerk's File No. 7713620 in the Deed Records of Montgomery County, Texas, amended by that certain Amendment of Declaration of Covenants, Conditions and Restrictions Fox Run Subdivision, Sections One, Two, Three and Four recorded October 16, 1980, under County Clerk's File No. 8036859 in the Deed Records of Montgomery County, Texas (such documents being sometimes collectively referred to herein as the "Declaration"), such Declaration setting forth and containing certain covenants, conditions and restrictions applicable to the property (as described or referenced therein), including, Fox Run, Sections Two (2) and Four (4), more particularly described as follows:

FOX RUN, SECTION TWO, a subdivision within the County of Montgomery, State of Texas, containing 54.5337 acres, according to the map or plat thereof recorded in Cabinet B, Page 30 of the Map Records of Montgomery County, Texas; and

FOX RUN, SECTION FOUR, a subdivision within the County of Montgomery, State of Texas, containing 9.3507 acres, according to the map or plat thereof recorded in Cabinet B, Page 30 of the Map Records of Montgomery County, Texas; and

WHEREAS, Article VII, Section 3 of the Declaration provides, in pertinent part, as follows:

Section 3. Duration and Amendment. The covenants and restrictions by this Declaration shall run with and bind the land, for a term of twenty-five (25) years

from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during its first term by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; and thereafter by an instrument signed by the Owners of not less than sixty (60%) percent of the Lots; provided any amendment be recorded in the Deed Records.... (*emphasis added*); and

WHEREAS, the Owners of at least sixty percent (60%) of the Lots within Fox Run, Sections Two (2) and Four (4) combined desire to amend the Declaration to provide that the Board of Directors (the "Board") of the Fox Run Maintenance Association (or an architectural committee composed of three (3) or more representatives by the Board) has the authority to consider and act upon (i.e., either grant or deny) applications for variances (i.e., deviations) regarding the architectural requirements of the Declaration.

NOW, THEREFORE, the following Paragraph is hereby added as the second Paragraph of Article V of the Declaration of Covenants, Conditions and Restrictions Fox Run, Section Two and Section Four:

Anything contained elsewhere in the Declaration to the contrary notwithstanding, the Board or its designated committee is hereby authorized and empowered, at its sole discretion, to make and permit reasonable modifications of and deviations (or variances) from any of the requirements of the Declaration relating to the type, kind, quantity, or quality of the building materials to be used in the construction of any building or improvement on any Subdivision Lot and of the size and location of any such building or improvement (including variances regarding any set back lines or building lines) when, in the sole and final judgment of the Board or its designated committee, such modifications and deviations in such improvements will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Subdivision and its improvements as a whole. The Board or its designated committee may require the submission to it of such documents and items (including as examples, but without limitation, written request for and description of the variances requested, plans, specifications, plot plans, and samples of materials) as it shall deem appropriate, in connection with its consideration of a request for a variance. If the Board or its designated committee shall approve such request for a variance, the Board or its designated committee may evidence such approval, and grant its permission for such variance, only by written instrument, signed by a majority of the then members of the Board or its designated committee. Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of denial from the Board or its designated committee; or (b) failure by the Board or

its designated committee to respond to the request for variance. No variances from the covenants of the Declaration shall be permitted or be available except at the discretion of the Board or its designated committee.

The foregoing amendment shall not be effective unless this instrument is approved by the Owners of at least sixty percent (60%) of the Lots in Fox Run, Sections Two (2) and Four (4) combined. If such required approval is obtained, such fact shall be attested to by a duly authorized representative of Fox Run Maintenance Association, a Texas Non-Profit Corporation (the "Association").

The amendment of the Declaration set forth above shall be deemed to be a part of and shall be interpreted in accordance with the Declaration, as previously amended. All provisions of the Declaration (as previously amended), not amended or changed hereby, are hereby ratified and confirmed in each and every particular, and shall continue in full force and effect pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions Fox Run, Section Two and Section Four, as previously amended.

EXECUTED by the hereinafter named persons on the dates hereinafter set forth.

APPROVAL AND CERTIFICATION BY ASSOCIATION

APPROVAL of the above and foregoing Second Amendment to the Declaration of Covenants, Conditions and Restrictions Fox Run, Section Two and Section Four by the FOX RUN MAINTENANCE ASSOCIATION, a Texas Non-Profit Corporation (the "Association"), is hereby evidenced by duly authorized officers of the Association, as shown by their signatures below. Further, this approval shall serve to evidence that the Association's records reflect that all owners of Lots within Fox Run, Sections Two (2) and Four (4) combined were provided notice of the Second Amendment and were given a fair opportunity to vote thereon, and that the required sixty percent (60%) approval was received, as evidenced by the attached Signature Pages/Ballots. Further, the Association hereby consents to and approves this Second Amendment to the Declaration of Covenants, Conditions and Restrictions Fox Run, Section Two and Section Four to be effective upon its filing of record in the Official Public Records of Real Property of Montgomery County, Texas.

EXECUTED this 16th day of January, 2003.

FOX RUN MAINTENANCE ASSOCIATION

By: *Katherine Alexander*

Printed Name: KATHERINE ALEXANDER

Office Held: President

ATTEST:

Marybeth Kardatzke

Printed Name: MARYBETH KARDATZKE

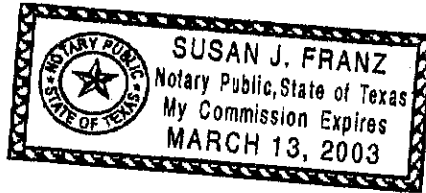
Office Held: Secretary, Fox Run
Maintenance Association

THE STATE OF TEXAS §
§
COUNTY OF MONTGOMERY §

Before me, a notary public, on this day personally appeared KATHERINE ALEXANDER, President of FOX RUN MAINTENANCE ASSOCIATION, known to me to be the person whose name is subscribed to the foregoing instrument and, being by me first duly sworn and declared that she executed same in the capacity and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 16th day of January, 2003

Susan J. Franz
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOX RUN, SECTION FIVE

THE STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Five (hereinafter referred to as the "Declaration") is made on the date hereinafter set forth by MELLON PROPERTIES COMPANY, a Louisiana corporation (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Five (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, according to the map or plat thereof (hereinafter referred to as "Plat") filed for record under County Clerk's File No. 9157403 and recorded in Cabinet G, Sheets 023A and 023B, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Five, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Five, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said Property and shall be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Mellon Properties Company, its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

CERTIFIED COPY CERTIFICATE
STATE OF TEXAS
COUNTY OF MONTGOMERY
The above is a full, true and correct photographic copy of the original record here in my lawful custody and possession, as the same is recorded in the Official Public Records of Real Property of this office and preserved on microfilm, and having microfilm of it under as stamped thereon, I hereby certify
MARK TURNBULL
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS
BY [Signature] DEPUTY

Section 4. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 5. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 6. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 7. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 9. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Five, a subdivision in Montgomery County, Texas, as set forth on the Plat thereof filed for record under County Clerk's File No. 9057403 and recorded in Cabinet G, Sheets 023A and 023B of the Map Records of Montgomery County, Texas. As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and right to use the recreational and other facilities owned or operated by the Association, for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the members of the Association;

(d) The right of the Association to limit the number of guests of Owners; and

(e) The right of the Association, in accordance with its Articles of Incorporation or Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property. The rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, such Owner's right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by such Owner. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefor, whether it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserve the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a nonprofit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcement of the Restrictions, providing for the maintenance, preservation, and architectural control within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Voting Rights. There shall be two classes of membership entitled to voting rights in the Association with respect to the Subdivision and they shall be as follows:

(a) Class A: All Owners other than Declarant, shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter

coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members, however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

(b) Class B: Class B Members shall be the Declarant, and for each Lot owned it shall be entitled to three (3) votes on each matter coming before the Members at any meeting or otherwise. Once a Lot is sold to an individual or individuals who would be classified as Class A Members, subject to paragraph (c) below, the three (3) votes attached to that Lot shall be extinguished, subject to paragraph (c) below. All Class B memberships with respect to the Subdivision shall cease and be automatically converted into Class A Memberships on the happening of any of the following events, whichever occurs earlier:

(i) When the total number of votes entitled to be cast by the Class A Members, with respect to the Subdivision, at any meeting of the Members or otherwise, equals the total number of votes entitled to be cast by the Class B Members, with respect to the Subdivision; or

(ii) At such earlier time as the Class B Members, in their sole discretion, shall elect, which such earlier time shall in any event be no later than June 10, 1992.

(c) Reinstatement of Class B Members. Notwithstanding the prior provisions of paragraph (b) above, if additional land is subject to the jurisdiction of the Association such that the Declarant owns more than 25% of all Lots, then the provisions in the first sentence of paragraph (b) above shall be automatically reinstated ipso facto.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements;
- and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association and, at the option of the Board of Directors of the Association, for any or all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided. It being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments.

(a) Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be One Hundred Sixty-Two and 07/100 Dollars (\$162.07) per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year by the Board of Directors of the Association without a vote of the Members.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment may be increased above five percent (5%) by the vote or written consent of a two-thirds (2/3) majority of each class of members.

(d) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum annual assessment.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) majority of each class of Members.

Section 5. Notice and Quorum For Any Action Authorized Under Section 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than 30 days or more than 60 days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment.

The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof. However, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of these Restrictions or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance as directed by the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the lesser of six percent (6%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to nonjudicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through the Board, upon ten (10) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 5 of Article IV to comply with the provisions of said Section 51.002 of the Texas Property Code relating to nonjudicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above, rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 8. Subordination of the Lien to Mortgages. The lien created in Section 5 of this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine.

Section 9. Assessments. The maximum annual assessment on all Lots, whether or not owned by the Declarant, shall be as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirement set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 10. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V
INSURANCE

The Association, through the Board of Directors, or its duly authorized agent, shall obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" of the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and any such other risk as shall customarily be covered with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other covering the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use.

Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceedings on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency. This shall be done only

after compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property not shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee is to protect the environmental and architectural integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties, however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representative(s) of any of the matters described in Section 2 above shall be in writing and delivered to all Members by first class mail. Such written notice shall be deemed delivered upon deposit of such notice, postage prepaid in a depository under the control of U.S. Postal Service. In the event said Committee or its designated representative(s) fail to approve or disapprove of any of the matters described in Section 2 above within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does

not adversely affect the architectural and environmental integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for variance, the Committee may evidence such approval, and grant its permission for such variance, only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lots and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of the Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used as dumping grounds for rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents and employees, to enter upon said Lot and to repair, maintain, and

restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to prevent: (a) infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right (but not the obligation), through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII
USE RESTRICTIONS

Section 1. Residential Use. Each and every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision, except on the Reserves; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns during the construction and sale period, or of the Association, its successors and assigns in furtherance of its powers and purposes as herein set forth. Each builder on Lots in the Subdivision shall be allowed to maintain office and construction facilities on any Lot; provided, however, that such office and construction facilities must be removed prior to the sale of the home on the Lot to a purchaser.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain, during the period of construction and sale of Lots within the Subdivision, upon any portion of a Lot, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots, including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever, a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be

restrained by a proper leash of chain, rope, plastic, leather, or similar material.

Section 6. Mineral Production. No oil drilling, oil development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, refuse or other wastes. All rubbish, trash, garbage, refuse or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. In a manner consistent with good housekeeping, the Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage of Vehicles. No portion of the streets or Common Area shall, without the express written permission of the Association, be used for the storage of boats, trailers, campers, unused or inoperable automobiles, or any items which the Association deems unsightly or inappropriate. Boats, trailers, campers, unused or inoperable automobiles and other machinery consistent with the use of the premises as a residence may be kept on Lots, provided they are kept or stored within a garage or such other place as may be completely out of view from the Common Area or any street or adjacent Lot. No Owner of any Lot in the Subdivision or any visitor or guest of any Owner shall be permitted to perform work on any vehicle in any driveway or street other than for work of a temporary nature. For the purpose of the foregoing term, "temporary" shall mean that the vehicle shall not remain in a driveway or street in excess of forty-eight (48) hours. Garage doors shall be closed at all times, except for immediate entry or exit.

Section 9. Storage of Building Materials. No Lot shall be used for storage of any material except that required for landscaping or construction which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one nine (9) square foot "For Lease" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter in and upon any Lot for the purpose of removing any sign being maintained thereon which has to be approved by it. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be constructed or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets will be permitted, and no installation of any type of device for disposal of sewage shall be allowed that would result in raw or untreated or unsanitary sewage being carried into the streets or into any body of water. Drainage of storm waste into sewage pipes shall not be permitted. No septic tank or other means of sewage disposal will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots are not permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at

least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least six hundred (600) square feet on the ground floor.

Section 4.

(a) Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. For the purpose of these restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. Each Living Unit will face the front of the Lot, and will be provided with driveway access from the front of the Lot only; except that garages on the corner Lots may face the side street. The Architectural Control Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than twenty (20) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than twenty (20) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line.

(b) Eaves, Steps, Porches. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal building of any type shall be placed or constructed upon any Lot which is visible from any street or any adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on Lots that abut on more than one street, the sidewalk shall extend the full width and depth of the

Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalk and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Subdivision Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Subdivision Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or the VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements if built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street. No permitted antenna shall exceed fifteen feet in height.

Section 13. Temporary Structures. No structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers and motor vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. Except as otherwise permitted under Article VIII, Section 4, during construction periods, no window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee. The decision of the Committee that any such matter is not harmonious shall be final.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be in harmony with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The owner of each Occupied Lot shall spot sod or sprig with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Grass and weeds shall be kept mowed to prevent unsightly appearance. Dead or damaged trees or other shrubbery, which might create a hazard to the property or persons within the Subdivision shall be promptly removed and repaired, and if not removed by Owner within thirty (30) days after written request by the Declarant or the Association, the Declarant or the Association may remove or cause to be removed such trees and/or shrubbery at the Owners expense and shall not be liable for damage caused by such removal. Vacant Lots shall be mowed and maintained in good appearance by the Owner.

ARTICLE X MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration of Covenants, Conditions, and Restrictions is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the

vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Post Office, its agents and employees to enter upon any portion of the Subdivision in performance of mail deliver or any other United States Post Office services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service may be available to all dwellings or structures located in the Subdivision. In such event, the metering equipment shall be located either on the exterior surfaces or walls of dwellings or structures or at points to be designated by the utility company. The utility company shall have a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the utility company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of its conductors and metering equipment. For so long as such underground service is maintained, the electrical service to each dwelling and structure located in the Subdivision shall be uniform and exclusively of the type known as single phase, 120/240 volt, 3 wire, 60 cycle alternating current. This two foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the utility company furnishing such service. However, this easement shall be kept clear of all buildings. Neither the Declarant nor the utility company using this easement shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions are are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Easement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII
ANNEXATION

Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members. However, upon submission and approval by FHA/VA of a general plan of the entire development and approval of each stage of development such additional stages of development may be annexed by the Developer without such approval by the membership.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions, and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns for a term of forty (40) years from the date this Declaration of Covenants, Conditions and Restrictions is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of Lots in the Subdivision shall always have the power and authority to amend this Declaration and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record in Montgomery County, Texas, so amending said Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the Federal Housing Administration, the Veterans Administration, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any Supplemental Declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or his mortgagee.

(b) All amendments hereof shall be approved by HUD while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Member or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, the plural singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association has executed this Declaration of Covenants, Conditions and Restrictions to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section 5 into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section 5 shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section 5.

IN WITNESS WHEREOF, this Declaration is executed on this the 12th day of June, 1992.

MELLON PROPERTIES COMPANY,
a Louisiana corporation

By: [Signature]
Name: J. CURTIS BLINGER
Title: VICE PRESIDENT

FOX RUN MAINTENANCE ASSOCIATION,
a Texas non-profit corporation

By: [Signature]
Name: Danny K Blanchard
Title: President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 12th day of June, 1992, by J. Curtis Blinger, as Vice President of MELLON PROPERTIES COMPANY, a Louisiana corporation, on behalf of said corporation.



Pamela R. Baltz
Notary Public, State of TEXAS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 11 day of June, 1992, by Danny K. Blanchard, as President of FOX RUN MAINTENANCE ASSOCIATION, a Texas non-profit corporation, on behalf of said corporation.



Madelyn Russell
Notary Public, State of TEXAS

MELLON PROPERTIES COMPANY
3100 TRAVIS, STE 402
HOUSTON, TEXAS, 77006

FILED FOR RECORD

92 JUN 15 AM 10:43

Boy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS)
COUNTY OF MONTGOMERY)
I hereby certify that this instrument was filed
in File Number Sequence on the date and at the
time stamped herein by me and was duly RECORDED
in the official Public Records of Real Property of
Montgomery County, Texas.

JUN 15 1992

 Boy Harris
NOTARY CLERK
MONTGOMERY COUNTY, TEXAS

ANNEXATION OF FOX RUN SUBDIVISION,
SECTION FIVE (5)

THE STATE OF TEXAS
COUNTY OF MONTGOMERY

KNOW ALL MEN BE THESE PRESENTS:

WHEREAS, by that certain instrument dated June 10, 1992, and designated as "Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Five", executed by Mellon Properties Company, a Louisiana Corporation, as Declarant, and approved by the Fox Run Maintenance Association, Inc., a Texas Non-Profit Corporation, to be recorded on even date herewithin the Official Public Records of Real Property of Montgomery County, Texas (hereinafter referred to as "said Restrictions"), that certain tract and parcels of land herein described and known as FOX RUN, SECTION FIVE (hereinafter referred to as "Section Five"), shall be encumbered and subjected to said Restrictions, to which said Restrictions reference is here made for particular description and all other pertinent purposes; and

WHEREAS, the "Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Five" referenced hereinabove are applicable to Fox Run, Section Five (5), an addition in Montgomery County, Texas, according to the map or plat thereof filed for record under County Clerk's File No. 9157403 and recorded in Cabinet G, Sheets 023A and 023 B, of the Map Records of Montgomery County, Texas.

WHEREAS, the referenced Restrictions for Fox Run, Section Five (5) refer to FOX RUN MAINTENANCE ASSOCIATION as having jurisdiction over those Sections.

WHEREAS, the Board of Directors of FOX RUN MAINTENANCE ASSOCIATION, a Texas Non-Profit Corporation (hereinafter sometimes referred to as "FRMA"), previously met to discuss the possible annexation of Fox Run, Section Five (5) into the Association's jurisdiction, pursuant to a proposed "Agreement Regarding Annexation". FRMA already exercises jurisdiction over Fox Run Sections One (1), Two (2), Three (3) and Four (4) per the maps or plats thereof filed of record in the Real Property Records of Montgomery County, Texas as follows:

Section One (1) - Volume 10, Page 95

Section Two (2) - Plat Cabinet "B", Page 30

Section Three (3) - Plat Cabinet "B", Page 25

Section Four (4) - Plat Cabinet "B", Page 30

The Board RESOLVED to recommend said annexation to the Association's membership and to conduct a vote pursuant to the following provision of the applicable Restrictions for Fox Run:

" Article VII, Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members. However, upon submission and approval by FHA/VA of a general plan of the entire development and approval of each stage of development such additional stages of development may be annexed by the Developer without such approval by the membership."

NOW, THEREFORE, the referenced vote has been conducted and the ballots tabulated. The proposed annexation received at least two-thirds (2/3) approval of FRMA's members (only one class of membership now exists). Accordingly, FRMA may now proceed with the annexation of Fox Run, Section Five as referenced hereinabove. The

original of this document shall be filed in the Montgomery County Real Property Records, thereby evidencing the annexation of Fox Run, Section (5) into FRMA's jurisdiction effective immediately upon filing of this document in the Real Property Records of Montgomery County, Texas.

Signed this 11 day of June, 1992.

FOX RUN MAINTENANCE ASSOCIATION
(A Texas Non-Profit Corporation)

By: *Danny K. Blanchard*
DANNY K. BLANCHARD, President

APPROVED:

MELLON PROPERTIES COMPANY
(A Louisiana Corporation)
"Declarant" for Section Five

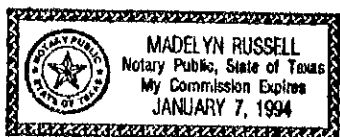
By: *J. Curtis Oblinger*
J. CURTIS OBLINGER,
Vice-President

THE STATE OF TEXAS

COUNTY OF MONTGOMERY

BEFORE ME, the undersigned authority, A Notary Public in and for the State of Texas, on this day personally appeared DANNY K. BLANCHARD, President of Fox Run Maintenance Association, a Texas Non-Profit Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledge to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 11th day of June, 1992.



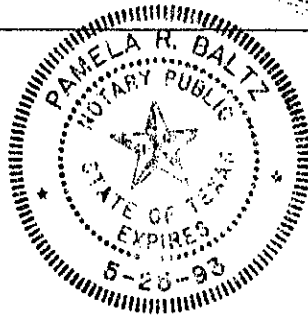
Madelyn Russell
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

THE STATE OF TEXAS

COUNTY OF HARRIS

BEFORE ME, the undersigned authority, Notary Public in and for the State of Texas, on this day personally appeared J. CURTIS OBLINGER, Vice-President of Mellon Properties Company, a Louisiana 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, as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1st day of June, 1992.



Pamela R. Baltz
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

MELLON PROPERTIES COMPANY
3100 TLAUS STE 402
HOUSTON, TEX, 77006

STATE OF TEXAS)
COUNTY OF MONTGOMERY)
I hereby certify that this instrument was filed
in File Number Sequence on the date and at the
time stamped herein by me and was duly RECORDED
in the official Public Records of Real Property of
Montgomery County, Texas

JUN 15 1992



Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

FILED FOR RECORD

92 JUN 15 AM 10:43

Roy Harris
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

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991-01-2558

6-3-57

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
FOX RUN, SECTION SIX

9440-126

THE STATE OF TEXAS S
 S KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY S

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Six (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by MELLON PROPERTIES COMPANY, a Louisiana corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property know as Fox Run, Section Six (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 19.5120 acres out of the Montgomery County School Land Survey No. 2, Abstract 351, as set forth on the plat thereof recorded in Cabinet G, Sheets 199-A and 199-B, of the Map Records of Montgomery County, Texas, also being a partial replat of Spring Heights, as recorded in Cabinet E, Sheet 94-A, Map Records of Montgomery County; and

A-3
A-5

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Six, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Six, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

991-01-2559

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Mellon Properties Company, its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Six, a subdivision in Montgomery

991-01-2560

County, Texas, as set forth on the plat thereof recorded in Cabinet G, Sheets 199-A and 199-B, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any

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such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefor, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a nonprofit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcement of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the

health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be two classes of membership entitled to voting rights in the Association with respect to the Subdivision and they shall be as follows:

(a) Class A: All Owners other than Declarant, shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

(b) Class B: Class B Members shall be the Declarant, and for each Lot owned it shall be entitled to three (3) votes on each matter coming before the Members at any meeting or otherwise. Once a Lot is sold to an individual or individuals who would be classified as Class A Members, subject to paragraph (c) below, the three (3) votes attached to that Lot shall be extinguished, subject to paragraph (c) below. All Class B memberships with respect to the Subdivision shall cease and be automatically converted into Class A Memberships on the happening of any of the following events, whichever occurs earlier:

991-01-2563

(i) When the total number of votes entitled to be cast by the Class A Members, with respect to the Subdivision, at any meeting of the Members or otherwise, equals the total number of votes entitled to be cast by the Class B Members, with respect to the Subdivision; or

(ii) Ten (10) years from the date these Restrictions are filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas.

(c) Reinstatement of Class B Members. Notwithstanding the prior provisions of paragraph (b) above, if additional land is subject to the jurisdiction of the Association such that the Declarant owns more than 25% of all Lots, then the provisions in the first sentence of paragraph (b) above shall be automatically reinstated ipso facto.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
 - (b) Special assessments for capital improvements;
- and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges

shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be One Hundred Seventy-eight and 68/100 Dollars (\$178.68) per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may

be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied), shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4: Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or

written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5: Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid

when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all

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lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V
INSURANCE

The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property not shall any exterior addition to or change or alteration therein be made until the plans or specifications therefore have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and

harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no

violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of the Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval

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by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII USE RESTRICTIONS

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a three-quarter (3/4) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision

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to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when the unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building,

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or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every

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garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least six hundred (600) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than twenty (20) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than twenty (20) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalk and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or the VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than fifteen (15) feet in height.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Photographic reproduction.

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Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately

upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI
EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using

this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company

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an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII
ANNEXATION

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that is a part of a general plan submitted to and approved by the FHA or VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions,

reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the

991-01-2585

Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

991-01-2586

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section Six into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Six shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Six.

IN WITNESS WHEREOF, this Declaration is executed on this the 26 day of May, 1994.

MELLON PROPERTIES COMPANY,
a Louisiana corporation

By: [Signature]
Name: Clara P. Vandiver
Title: Vice President

ATTEST:

By: [Signature]
Name: Wanda K. Long
Title: ASSISTANT SECRETARY

991-01-2587

FOX RUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

By: *Robert L. Blanchard*
Name: *Robert L. Blanchard*
Title: *President*

ATTEST:

By: *Susan J. Frantz*
Name: *SUSAN J. FRANTZ*
Title: *ASSOCIATION MANAGER*

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 26th
day of May, 1994, by *Clinton D. Perdue*, Vice President
of Mellon Properties Company, a Louisiana corporation, on behalf of
said corporation.

Kathy Morgan
NOTARY PUBLIC, STATE of Texas
KATHY MORGAN
Notary Public State of Texas
My Comm. Expires 1/1/97

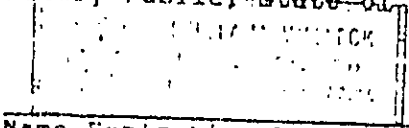
Name Expiration Date, and Seal

991-01-2588

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this the 23RD day of JULY, 1994, by JAYNE K. BIRCHARD, an PRESIDENT of Fox Run Maintenance Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

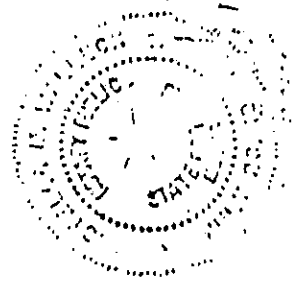
[Handwritten Signature]
Notary Public, State of Texas



Name Expiration Date, and Seal

RECORDER'S MEMORANDUM:
At the time of recording, this instrument was found to be inadequate for the best graphic reproduction because of slight discoloration or photo copy, discolored paper, etc. All black-out, additions and changes were present at the time the instrument was filed and recorded.

Return to:
MELLON PROPERTIES COMPANY
3100 Travis, Suite 402
Houston, Texas 77006
Attn: Ms. Barbara Gurtner

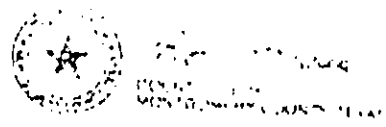


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[Handwritten Signature]
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
This instrument was filed in the
Name of Jayne K. Birchard on the
23rd day of July 1994 at the time
of recording.

JUL 20 1994



9528164

064-00-1316

~~28/08/95~~
38 LAW COURTESY

5/5/95

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR FOX RUN, SECTION SIX

STATE OF TEXAS

COUNTY OF MONTGOMERY

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Six (this "Amendment") is executed to be effective as of May 1, 1995 by Mellon Properties Company, a Louisiana corporation ("Declarant").

Declarant executed that certain Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Six, dated May 26, 1994, and filed for record in the office of the County Clerk of Montgomery County, Texas, under Clerk's File No. 9440426, and recorded under Film Code No. 991-01-2558 (the "Declaration"). Article XIII, Section 2 of the Declaration provides that the Declaration may be amended by (i) the Owners of two-thirds of the total number of Lots in the Subdivision (all as defined in the Declaration), or (ii) the Declarant for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing in the Declaration or for the purpose of complying with any resolution or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof.

Subsequent to the filing of the Declaration of record, Declarant has discovered a typographical error in Article IX, Section 4, with respect to the location of Living Units on corner Lots and the correct set-back distance from the adjacent street. Declarant is also the Owner of more than two-thirds of the Lots in the Subdivision and is therefore entitled to amend the Declaration for the purpose correcting the set-back distance for corner Lots.

NOW, THEREFORE, Declarant, acting pursuant to its powers granted under the Declaration as both Owner of a majority of Lots in the Subdivision and as Declarant, hereby amends the Declaration (1) to delete the seventh sentence of Article IX, Section 4, of the Declaration, and (2) to insert in its place the following sentence:

The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street.

This First Amendment shall amend the Declaration only as set forth above, and all other terms and provisions of the Declaration shall remain unchanged, except as modified hereby.

This First Amendment is executed to be effective as of the date first above written.

MELLON PROPERTIES COMPANY,
a Louisiana corporation

By: *[Signature]*
Name: Clinton D. Pendleton
Title: Vice President

ATTEST:

By: *[Signature]*
Name: Nina Reyna
Title: Asst. Secretary



STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 5th day of May, 1995 by Clinton D. Pendleton, Vice President of Mellon Properties Company, a Louisiana corporation, on behalf of said corporation.



[Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Please return this to:
Clinton D. Pendleton
Mellon Properties Company
3100 Travis St., Ste. 402
Houston, Texas 77006-3699

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the official Public Records of Real Property of Montgomery County, Texas.

FILED FOR RECORD
95 MAY 15 PM 3:23

MAY 15 1995

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS
[Signature] DEPUTY

[Signature]
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

9526164

064-00-1316

~~38/10/1995~~
38/10/1995
COURTESY

5/10/95

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR FOX RUN, SECTION SIX

STATE OF TEXAS

COUNTY OF MONTGOMERY

This First Amendment to Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Six (this "Amendment") is executed to be effective as of May 1, 1995 by Mellon Properties Company, a Louisiana corporation ("Declarant").

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Subsequent to the filing of the Declaration of record, Declarant has discovered a typographical error in Article IX, Section 4, with respect to the location of Living Units on corner Lots and the correct set-back distance from the adjacent street. Declarant is also the Owner of more than two-thirds of the Lots in the Subdivision and is therefore entitled to amend the Declaration for the purpose correcting the set-back distance for corner Lots.

NOW, THEREFORE, Declarant, acting pursuant to its powers granted under the Declaration as both Owner of a majority of Lots in the Subdivision and as Declarant, hereby amends the Declaration (1) to delete the seventh sentence of Article IX, Section 4, of the Declaration, and (2) to insert in its place the following sentence:

The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street.

This First Amendment shall amend the Declaration only as set forth above, and all other terms and provisions of the Declaration shall remain unchanged, except as modified hereby.

This First Amendment is executed to be effective as of the date first above written.

MELLON PROPERTIES COMPANY,
a Louisiana corporation

By: *[Signature]*
Name: Clinton D. Pendleton
Title: Vice President

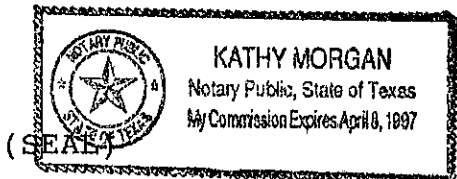
ATTEST:

By: *[Signature]*
Name: Nina Reyna
Title: Asst. Secretary



STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 5th day of May, 1995 by Clinton D. Pendleton, Vice President of Mellon Properties Company, a Louisiana corporation, on behalf of said corporation.



[Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Please return this to:
Clinton D. Pendleton
Mellon Properties Company
3100 Travis St., Ste. 402
Houston, Texas 77006-3699

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the official Public Records of Real Property of
Montgomery County, Texas.

FILED FOR RECORD
95 MAY 15 PM 3:23

MAY 15 1995

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS
[Signature] DEPUTY



[Signature]
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOX RUN, SECTION SEVEN**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Seven (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by MELLON PROPERTIES COMPANY, a Louisiana corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Seven (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 18.1520 acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded in Cabinet J, Sheets 168 and 169, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Seven, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Seven, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

**EXHIBIT
PAGE**

"A"

Section 3. "Declarant" shall mean and refer to Mellon Properties Company, its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Seven, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded in Cabinet J, Sheets 168 and 169, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II **PROPERTY RIGHTS**

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good

order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be Two Hundred Six and 00/100 Dollars (\$206.00) per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the

Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems

fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V INSURANCE

The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and

facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith

deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the

Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII **USE RESTRICTIONS**

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets

may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction,

which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least six hundred (600) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback

lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than twenty (20) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than fifteen (15) feet in height.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI
EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by

designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things

of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII ANNEXATION

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their

respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or

circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section Seven into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Seven shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Seven.

IN WITNESS WHEREOF, this Declaration is executed on this the 23 day of February, 1998.

MELLON PROPERTIES COMPANY,
a Louisiana corporation

By: [Signature]
Name: Clinton D. PENNINGTON
Title: Vice President

ATTEST:

By: _____
Name: _____
Title: _____

FOX RUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

By: _____
Name: _____
Title: _____

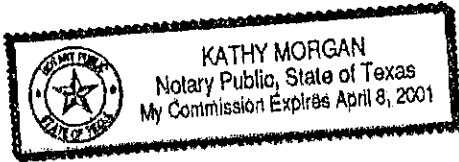
ATTEST:

By: _____
Name: _____
Title: _____

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 23 day of February, 1998,
by Clinton P. Perolator, Vice Pres. of Mellon Properties Company, a
Louisiana corporation, on behalf of said corporation.

Kathy Morgan
Notary Public, State of Texas



Name, Expiration Date, and Seal

THE STATE OF TEXAS §
§
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this _____ day of _____, 1998,
by _____ as _____ of Fox Run Maintenance Association,
Inc., a Texas non-profit corporation, on behalf of said corporation.

Notary Public, State of Texas

Name, Expiration Date, and Seal

When Recorded Return to:

John R. Wallace, Esq.
Winstead Sechrest & Minick P.C.
2400 Bank One Center
910 Travis Street
Houston, Texas 77002

HO980260036
021198 v12
365:19064-10

FILED FOR RECORD

98 JUL 27 PM 2:54

MARK TURNBULL, CO. CLERK
MONTGOMERY COUNTY, TEXAS

Mark Turnbull
DEPUTY

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify that this instrument was filed in
File Number _____ Sequence _____ on the date and at the time
stamped herein by me and was duly RECORDED in
the official Public Records of Real Property of
Montgomery County, Texas.

JUL 27 1998



Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

99400 490 /DW/38

682-00-0325

37

Part Title of Montgomery County

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FOX RUN, SECTION EIGHT

2000-025454

THE STATE OF TEXAS §
COUNTY OF MONTGOMERY § KNOW ALL MEN BY THESE PRESENTS:

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Eight (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by ELAN DEVELOPMENT CO., INC., a Texas corporation (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Eight (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 15.6903 acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded in Cabinet N, Sheets 105 and 106 of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Eight, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Eight, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Elan Development Co., Inc., its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Eight, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded in Cabinet N, Sheets 105 and 106, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such

easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the

Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be **Two Hundred Sixteen and 00/100 Dollars (\$216.00)** per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby

authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge

is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of

the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V INSURANCE

Section 1. The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other

hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith

deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of

said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII **USE RESTRICTIONS**

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes,

and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be

placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX
ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least eight hundred (800) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. The front

building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than twenty (20) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area

formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a wooden fence not higher than six (6) feet or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than five (5) feet above the highest point of the roof line of the structure.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery

County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For

so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII ANNEXATION

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that

is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision

shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof, provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its

682-00-0348
consent to the annexation of Fox Run, Section Eight into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Eight shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Eight.

682-00-0349

IN WITNESS WHEREOF, this Declaration is executed on this the 8 day of MARCH, 1999.
2000

ELAN DEVELOPMENT CO., INC.,
a Texas corporation

By: [Signature]
Name: H.G. MANNERS
Title: PRESIDENT

ATTEST:

By: [Signature]
Name: D.G. Mairini
Title: U.D

FOXRUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

By: [Signature]
Name: Donald E. Burleson
Title: VICE PRESIDENT

ATTEST:

By: [Signature]
Name: PAUL STERLING
Title: SECRETARY

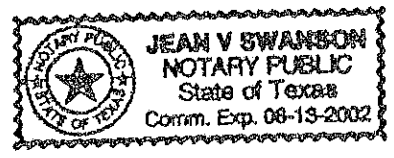
RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

682-00-0350

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 8TH day of MARCH, ²⁰⁰⁰~~1999~~, by M.G. MANNERS, PRESIDENT of Elan Development Co., Inc., a Texas corporation, on behalf of said corporation.

Jean V. Swanson
Notary Public, State of Texas



JEAN V. SWANSON 08-13-2002
Name, Expiration Date, and Seal

THE STATE OF TEXAS §
§
COUNTY OF MONTGOMERY §

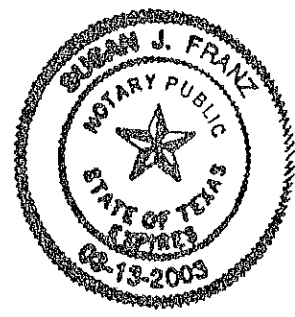
This instrument was acknowledged before me on this 1th day of February, ²⁰⁰⁰~~1999~~, by O.E. Burleson, as Vice President of Fox Run Maintenance Association, Inc., a Texas non-profit corporation, on behalf of said corporation.

Susan J. Franz
Notary Public, State of Texas

SUSAN J. FRANZ 3-13-03
Name, Expiration Date, and Seal

When Recorded Return to:

Clinton D. Pendleton
Elan Development Co., Inc.
19627 IH45 North
Suite 230
Spring, Texas 77388



::ODMA\PCDOCS\HOUSTON_1\3938882
396:22363-1

682-00-0351

FOX RUN, SECTION EIGHT
WAIVER OF INGRESS AND EGRESS

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

WHEREAS, ELAN DEVELOPMENT CO., INC., a Texas corporation, is the record owner of the following described property, to-wit;

Fox Run, Section Eight, being a subdivision in Montgomery County, Texas, according to the map or plat thereof filed of record under County Clerk's File No 200-012570 and recorded in Cabinet N, Sheets 105 and 106, of the Map Records of Montgomery County, Texas.

NOW, THEREFORE, the undersigned does hereby waive for itself, its successors and assigns, the right of ingress and egress to the surface at all times for the purpose of mining, drilling and exploring said property for oil, gas or other minerals, but the undersigned, its successors and assigns, hereby retains and reserves the right to pool the land with other land together with the right to drill under and through the subsurface of the land for development of oil, gas, and other minerals.

EXECUTED the 8 day of MARCH, ²⁰⁰⁰1999.

ELAN DEVELOPMENT CO., INC.,
a Texas corporation

By: [Signature]
Name: M.G. MANNERS
Title: PRESIDENT

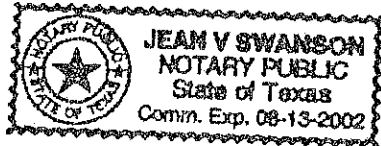
ATTEST:

By: [Signature]
Name: D. L. Mann
Title: V.P.

682-00-0352

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 8TH day of MARCH, 2000, by M.G. MANNERS, PRESIDENT of Elan Development Co., Inc., a Texas corporation, on behalf of said corporation.



Jean V. Swanson
Notary Public, State of Texas

JEAN V. SWANSON 08-13-2002
Name, Expiration Date, and Seal

When Recorded Return to:

Clinton D. Pendleton
Elan Development Co., Inc.
19627 IH45 North
Suite 230
Spring, Texas 77388

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396.22363-1

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOX RUN, SECTION NINE**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Nine (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by ELAN DEVELOPMENT CO., INC., a Texas corporation (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Nine (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing _____ acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded in Cabinet ____, Sheets ____ and ____, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Nine, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Nine, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Elan Development Co., Inc., its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Nine, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded in Cabinet __, Sheets __ and __ of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in

other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be **Two Hundred Sixteen and 00/100 Dollars (\$216.00)** per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby

authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge

is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of

the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V **INSURANCE**

Section 1. The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other

hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith

deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of

said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII USE RESTRICTIONS

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further

provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be

placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX

ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least eight hundred (800) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances, up to one (1) foot in any direction in house locations. The front

building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than ten (10) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area

formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a wooden fence not higher than six (6) feet or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than five (5) feet above the highest point of the roof line of the structure.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X

MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI

EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery

County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For

so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII **ANNEXATION**

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that

is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision

shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its

consent to the annexation of Fox Run, Section Nine into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Nine shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Nine.

IN WITNESS WHEREOF, this Declaration is executed on this the 21 day of November, 2000.

ELAN DEVELOPMENT CO., INC.,
a Texas corporation

By: [Signature]
Name: D. G. Morrison
Title: V.P.

ATTEST:

By: [Signature]
Name: JEAN V. SWANSON
Title: VICE PRESIDENT/SECRETARY

FOX RUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

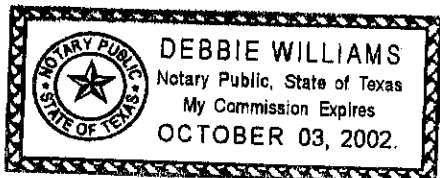
By: [Signature]
Name: D. E. Burleson
Title: President

ATTEST:

By: [Signature]
Name: KATHERINE ALEXANDER
Title: VICE PRESIDENT

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 27 day of November, 2000, by D.G. Morrison, Vice President of Elan Development Co., Inc., a Texas corporation, on behalf of said corporation.

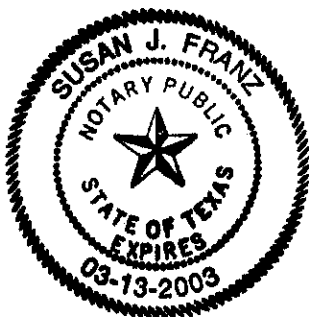


Debbie Williams
Notary Public, State of Texas

Name, Expiration Date, and Seal

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 8th day of January, 2000, by D. E. Burleson, as President of Fox Run Maintenance Association, Inc., a Texas non-profit corporation, on behalf of said corporation.



Susan J. Franz
Notary Public, State of Texas

SUSAN J. FRANZ - 03-13-2003
Name, Expiration Date, and Seal

When Recorded Return to:

Clinton D. Pendleton
Elan Development Co., Inc.
19627 IH45 North
Suite 230
Spring, Texas 77388

::ODMA\PCDOCS\HOUSTON_1465851\1
396:22363-1

27

Courtesy Recording
By Recording This Document
Stewart Title Does Not Assume Any
Responsibility Neither Assumed Or Implied

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOX RUN, SECTION TEN**

2003-040674

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Ten (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by ELAN DEVELOPMENT, L.P., a Texas limited partnership (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Ten (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 21.7211 acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded in Cabinet S, Sheets 166 and 167, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Ten, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Ten, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities,

community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Elan Development, L.P., its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Ten, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded in Cabinet __, Sheets __ and __, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the

Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association has been previously organized and is currently existing as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless

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their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in

other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be Two hundred and Twenty-Six and 00/100 Dollars (\$226.00) per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

- (a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied)

shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment

for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real

Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Any remedy against an Owner pursuant to this Section shall be exercised subject to the provisions of the Texas Residential Property Owners Act, Ch. 209, Property Code.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from

the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V INSURANCE

Section 1. The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee

may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of

the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII **USE RESTRICTIONS**

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets

such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least eight hundred (800) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth,

and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than ten (10) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a wooden fence not higher than six (6) feet or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than five (5) feet above the highest point of the roof line of the structure.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon

which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X

MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall

be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the

National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the

Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII ANNEXATION

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees

incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

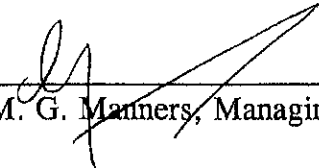
Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section Ten into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Ten shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Ten.

IN WITNESS WHEREOF, this Declaration is executed on this the 9 day of October, 2002.

ELAN DEVELOPMENT, L.P.
a Texas limited partnership

By: ELAN, L.C., a Texas Limited Liability Company, General Partner

By: 
M. G. Manners, Managing Member

FOX RUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

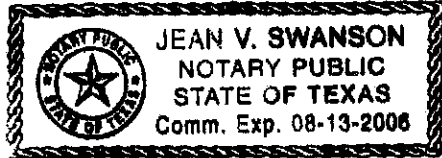
By: KATHERINE ALEXANDER
Name: Katherine Alexander
Title: PRESIDENT

ATTEST:

By: TIM OLECNICZAK
Name: Tim Olechniczak
Title: L.P. O O

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 9th day of OCTOBER, 2002, by M G. Manners, Managing Member of ELAN L.C., a Texas limited liability company, on behalf of such limited liability company, acting in its capacity as General Partner of ELAN DEVELOPMENT, L.P., a Texas limited partnership.



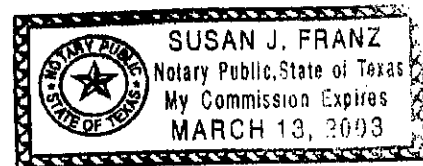
Jean V. Swanson
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 17th day of October, 2002, by Katherine Alexander as President of FOX RUN MAINTENANCE ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Susan J. Franz
Notary Public in and for the State of Texas

When Recorded Return to:
Clinton D. Pendleton
Elan Development, L.P.
19627 IH-45 North
Suite 230
Spring, Texas 77388

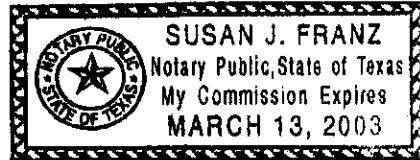


THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 17th day of October, 2002, by Katherine Alexander, as President of FOX RUN MAINTENANCE ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Susan J. Franz
Notary Public in and for the State of Texas

When Recorded Return to:
Clinton D. Pendleton
Elan Development, L.P.
19627 IH-45 North
Suite 230
Spring, Texas 77388



FILED FOR RECORD

2003 APR 10 PM 2: 51

Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the Official Public Records of Real Property at
Montgomery County, Texas.

APR 10 2003



Mark Turnbull
County Clerk
Montgomery County, Texas

Courtesy Recording
By Recording This Document
Stewart Title Does Not Assume Any
Responsibility Neither Assumed Or Implied

185-10-0869

27

STEWART TITLE HOUSTON DIVISION
#38
**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOX RUN, SECTION ELEVEN**

2002-118319

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Eleven (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by ELAN DEVELOPMENT, L.P., a Texas limited partnership (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Eleven (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 3.1545 acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded in Cabinet S, Sheets 153 and —, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Eleven, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Eleven, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler

systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Elan Development, L.P., its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Eleven, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded in Cabinet __, Sheets __ and __, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and

such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Organization. The Association has been previously organized and is currently existing as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered

Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges

and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be Two Hundred Twenty-Six and 00/100 Dollars (\$226.00) per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

- (a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner

shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there

shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Any remedy against an Owner pursuant to this Section shall be exercised subject to the provisions of the Texas Residential Property Owners Act, Ch. 209, Property Code.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any

assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V INSURANCE

Section 1. The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability

and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural,

mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII
USE RESTRICTIONS

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the

Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section,

"fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least eight hundred (800) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension

abutting a street. The Committee shall be empowered to grant exceptions for minor variances. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than ten (10) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted

to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a wooden fence not higher than six (6) feet or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than five (5) feet above the highest point of the roof line of the structure.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X

MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI
EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be

made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII **ANNEXATION**

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance

of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section Eleven into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Eleven shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Eleven.

IN WITNESS WHEREOF, this Declaration is executed on this the 9 day of October, 2002.

ELAN DEVELOPMENT, L.P.
a Texas limited partnership

By: ELAN, L.C., a Texas Limited
Liability Company, General Partner

By: 
M. G. Manners, Managing Member

FOX RUN MAINTENANCE ASSOCIATION, INC.,
a Texas non-profit corporation

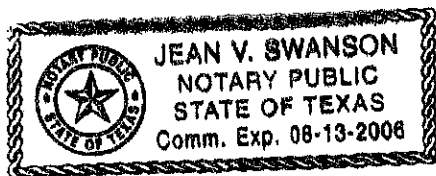
By: KATHERINE ALEXANDER
Name: Katherine Alexander
Title: PRESIDENT

ATTEST:

By: TIM OLEJNICZAK
Name: Tim Olejniczak
Title: V.P.

THE STATE OF TEXAS §
 §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 9TH day of OCTOBER, 2002, by M G. Manners, Managing Member of ELAN L.C., a Texas limited liability company, on behalf of such limited liability company, acting in its capacity as General Partner of ELAN DEVELOPMENT, L.P., a Texas limited partnership.



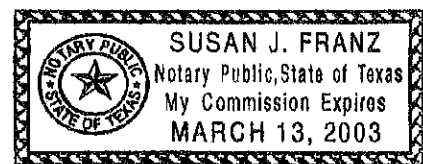
Jean V. Swanson
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 17th day of October, 2002, by Katherine Alexander, as President of FOX RUN MAINTENANCE ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Susan J. Franz
Notary Public in and for the State of Texas

When Recorded Return to:
Clinton D. Pendleton
Elan Development, L.P.
19627 IH-45 North
Suite 230
Spring, Texas 77388

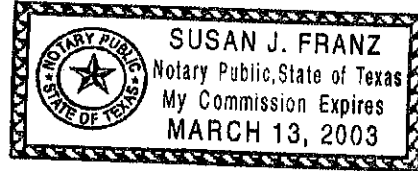


THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 17th day of October, 2002, by Katherine Alexander, as President of FOX RUN MAINTENANCE ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Susan J. Franz
Notary Public in and for the State of Texas

When Recorded Return to:
Clinton D. Pendleton
Elan Development, L.P.
19627 IH-45 North
Suite 230
Spring, Texas 77388



FILED FOR RECORD

2002 NOV -8 PM 2:46

Mark J. Turbell
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was filed in
File Number Sequence on the date and at the time
stamped herein by me and was duly RECORDED in
the Official Public Records of Real Property at
Montgomery County, Texas

NOV - 8 2002



Mark J. Turbell
County Clerk
Montgomery County, Texas

2004-100703

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FOX RUN, SECTION TWELVE**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF MONTGOMERY §

THAT this Declaration of Covenants, Conditions and Restrictions for Fox Run, Section Twelve (hereinafter referred to as the "Restrictions") is made on the date hereinafter set forth by ELAN DEVELOPMENT, L.P., a Texas limited partnership (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property known as Fox Run, Section Twelve (hereinafter referred to as the "Property"), being a subdivision in Montgomery County, Texas, containing 16.413 acres out of the Montgomery County School Land Survey, Abstract 351, as set forth on the plat thereof recorded under County Clerk's File No. 2004-077787 in Cabinet W, Sheet 95, of the Map Records of Montgomery County, Texas; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase property in Fox Run, Section Twelve, that there be established and maintained a uniform plan for the improvement and development of Fox Run, Section Twelve, as a highly restricted and modern subdivision of the highest quality;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Property. These easements, covenants, restrictions, and conditions shall run with said real property and be binding upon all parties having or acquiring any right, title or interest in a Lot, as hereinafter defined, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

The following words, when used in this Declaration of Covenants, Conditions and Restrictions, shall have the following meanings:

Section 1. "Association" shall mean and refer to Fox Run Maintenance Association, Inc., a Texas non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean and refer to that property owned or to be acquired by the Association and shall include, but is not limited to, all recreational facilities, community facilities, swimming pools, storage facilities, pumps, trees, landscaping, sprinkler

systems, pavements, streets, pipes, wires, conduits, and other public utility lines situated thereon.

Section 3. "Declarant" shall mean and refer to Elan Development, L.P., its successors and assigns, provided such successors and assigns (i) acquire more than two (2) Lots in the Subdivision for purposes of development or resale, and (ii) are designated as the Declarant by an instrument in writing executed by Declarant, and filed of record in the Official Public Records of Real Property of Montgomery County, Texas.

Section 4. "FHA" shall mean the Federal Housing Administration or any successor federal agency.

Section 5. "Lot" shall mean and refer to any of the numbered lots shown on the Subdivision Plat or any replat thereof.

Section 6. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit; provided, however, the term "Living Unit" shall not include a garage constructed on the Lot which is detached from the other improvements on the Lot.

Section 7. "Occupied Lot" shall mean and refer to any Lot on which there is a Living Unit in which one or more persons are residing.

Section 8. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation; however, the term "Owner" shall include any mortgagee or lienholder who acquires fee simple title to any Lot through judicial or nonjudicial foreclosure.

Section 10. "Subdivision" shall mean and refer to that certain real property within the perimeters of the legal description of Fox Run, Section Twelve, a subdivision in Montgomery County, Texas, as set forth on the plat thereof recorded under Clerk's File No. 2004-077787 in Cabinet W, Sheet 95, of the Map Records of Montgomery County, Texas (the "Plat"). As used in this Declaration, the term "Subdivision" shall not cover or include any of the Common Area.

Section 11. "VA" shall mean the Veterans Administration or any successor federal agency.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easement of Access and Enjoyment. Every Owner shall have an easement of access and a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

(b) The right of the Association to suspend a Member's voting rights and rights to use the recreational and other facilities owned or operated by the Association for any period during which any assessment against his Lot or any other sum due the Association by him remains unpaid in excess of thirty (30) days. In the event any assessments have been or are being expended to provide services for the Members (for example, garbage collection services), the Association shall have the right to terminate or cause to be terminated such services for any member during the period said Member is in default in excess of thirty (30) days in payment of any assessment against said Member's Lot. The right of the Association to suspend a Member's voting rights and rights to use the Association's facilities shall extend for a period of sixty (60) days for any infraction of the Association's published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be determined by the Association or by two-thirds (2/3) of the votes cast by each class of the Members of the Association;

(d) The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage such property. In the event of a default under or foreclosure of any such mortgage, the rights of the lender, its successors or assigns, shall be subject to the easement of enjoyment of the Members, subject to such lender's right to charge and collect admission or other fees for the use of such facilities; and

(e) The right of the Association to limit the number of guests of Owners.

Section 2. Delegation of Use. Any Owner may delegate in accordance with the Bylaws of the Association, his right or enjoyment to the Common Area and facilities to members of his family, his tenants, or contract purchasers who reside on the Lot owned by him. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a Deed therefore, whether it shall be express in the Deed or the evidence of the conveyance, is deemed to covenant that any lease executed on a Lot shall be in writing and contain provisions binding any lessee thereunder to the terms of this

Declaration and any rules and regulations published by the Association applicable to the Common Area, and further providing that noncompliance with the terms of this Declaration and any rules and regulations published by the Association shall be a default thereunder.

Section 3. Rules and Regulations. The Association shall have the right to establish reasonable rules and regulations, and to delegate same to an agent or successor. The Association shall have the right to delegate the management of the Common Area.

Section 4. Title to the Common Area. The Common Area shall be owned by the Association or its successors and assigns, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services as set forth in Article XI, Section 1 hereof.

ARTICLE III **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Organization. The Association has been previously organized and currently exists as a non-profit corporation under the laws of the State of Texas. The principal purposes of the Association are the collection, expenditure and management of the maintenance funds, enforcements of the Restrictions, providing for the maintenance, preservation, and architectural control (upon termination of the powers of the Committee as defined herein) within the Subdivision, the general overall supervision of all of the affairs and well-being of the Subdivision and other Subdivisions within its jurisdiction and the promotion of the health, safety and welfare of the residents within the Subdivision and other Subdivisions within its jurisdiction.

Section 2. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in a Lot which is a part of the Subdivision, including contract sellers, shall hold a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquires title to any Lot which is a part of the Subdivision, through judicial or nonjudicial foreclosure, shall be a Member of the Association.

Section 3. Board of Directors. The Association shall act through a Board of Directors who will manage the affairs of the Association as specified in the Bylaws of the Association.

Section 4. Voting Rights. There shall be one class of membership ("Class A") entitled to voting rights in the Association with respect to the Subdivision. All Owners and Declarant shall be considered Class A Members, and for each Lot owned shall be entitled to one (1) vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as hereinabove provided in Article II, Section 1(b). When a particular Lot is owned by more than one individual or entity, all the individuals or entities holding an ownership interest in that Lot shall be considered Class A Members; however, for that particular Lot they shall be entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Lot shall be exercised as they among themselves determine.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot within the Subdivision which shall be or thereafter become subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Lot that shall be or thereafter become assessable, by acceptance of a Deed therefor, whether or not it shall be express in the Deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this instrument.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges and assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorneys' fees shall also be and remain the personal obligation of the individual or individuals who owned the particular Lot at the time the assessment or charge fee becomes due notwithstanding any subsequent transfer of title to such Lot. Upon a transfer of a Lot, the assessments accrued to the date of transfer must be paid in full. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and

welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association for any and all of the following purposes: lighting; improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, and esplanades in the Subdivision and in other subdivisions within its jurisdiction; collecting and disposing of garbage, ashes, rubbish, and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration of Covenants, Conditions and Restrictions; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees and shrubbery on esplanades and in the Common Area; acquiring and maintaining any amenities or recreational facilities that are or will be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision and in other subdivisions within its jurisdiction in neat and good order or which they consider of general benefit to the Owners or occupants of the Subdivision and in other subdivisions within its jurisdiction, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences and Lots as hereinafter provided, it being understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds shall be final and conclusive so long as said judgment is exercised in good faith.

Section 3. Basis and Maximum Level of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot from Declarant to an Owner, the maximum annual assessment shall be ~~Two hundred thirty-seven and 30/100~~ 30/100 Dollars (\$ 237.30) per Lot. From and after the first day of January of the year immediately following the date of commencement of the first annual assessment, the maximum annual assessment may be increased by the Board of Directors of the Association, effective the first day of January of each year, by an amount up to a five percent (5%) increase over the prior year's annual assessment, without a vote of the Members of the Association. The maximum annual assessment may be increased above the above-mentioned percentage increase only by approval of two-thirds (2/3) of each class of Members in the Association present and voting at a meeting duly called for this purpose. In lieu of notice and a meeting of Members as provided in the Bylaws of the Association, a door-to-door canvass may be used to secure the written approval of two-thirds (2/3) of each class of Members for such increase in the annual assessment or in the special assessment for capital improvements as provided below. This increase shall become effective on the date specified in the document evidencing such approval only after such document has been filed for record in the Office of the County Clerk of Montgomery County, Texas. After consideration of current maintenance costs and future

needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum amount approved by the Members.

Anything contained in this Declaration to the contrary notwithstanding, the maximum annual assessment shall be chargeable and payable as follows:

(a) Occupied Lots: Those Lots containing an occupied Living Unit (that is, a Living Unit that has been initially occupied, although it may no longer be occupied) shall be assessed the full assessment as set by the Board of Directors of the Association; and

(b) Completed Living Unit: Those Lots containing a substantially completed but unoccupied Living Unit (that is, a Living Unit that has not been initially occupied) shall be assessed fifty percent (50%) of the full assessment as set by the Board of Directors of the Association; and

(c) Vacant Lots: Those Lots which are vacant or upon which a residence is under construction shall be assessed at a rate equal to fifty percent (50%) of the full assessment as set by the Board of Directors of the Association. If such Owner fails to maintain said Lot in accordance with the requirements set forth in this Declaration, the Association is hereby authorized to do so and any expense the Association incurs thereby shall become a lien on the Lot and the general personal obligation of said Owner.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of the Association may levy, in any assessment 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 Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of two-thirds (2/3) of each class of Members of the Association.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 which requires a vote of the Members shall be sent to all Members not less than thirty (30) days or more than sixty (60) days in advance of such meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes or each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Date of Commencement and Determination of Annual Assessment. The annual assessment provided for herein shall commence as to all Lots on a date fixed by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall fix the amount of the annual assessment to be levied against each Lot in the next calendar year at least thirty (30) days in advance of each annual assessment period. Written notice of the figure at which the Board of Directors of the Association has set the annual assessment shall be sent to every Owner whose Lot is subject to the payment thereof; however, the failure by the Board of Directors of the Association to fix an annual assessment for any year will not be deemed a waiver with respect to any of the provisions of this Declaration or a release of liability of any Owner to pay annual assessments, or any installments thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessment established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors of the Association shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid by each Owner within thirty (30) days after receipt of a statement therefor. Assessments shall be due and payable yearly in advance on the first day of January or as directed by the Board of Directors of the Association. The Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a particular Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest from the due date until paid at the maximum rate permitted by law, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien herein retained against the Lot. Interest, costs and reasonable attorneys' fees incurred in any such action shall be added to the amount of such assessment or charge. In order to secure the payment of the assessments or charges hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and nonjudicial proceedings by the Association. As additional security for payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by nonjudicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such Owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with nonjudicial foreclosure pursuant to the provisions of said Section 51.002 of the

Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to foreclose the lien nonjudicially as provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date of which sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount of default; third, any amounts required by law to be paid before payment to the Owner; and, fourth, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days' prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 7 of Article IV to comply with the provisions of Section 51.002 of the Texas Property Code hereafter, and the President or any Vice President of the Association, acting without joinder of any other Owner or mortgagee or other person, may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. In addition to the above

rights, the Association shall have the right to refuse to provide the services of the Association to any Owner who is delinquent in the payment of the above described assessments.

Any remedy against an Owner pursuant to this Section shall be exercised subject to the provisions of the Texas Residential Property Owners Act, Ch. 209, Property Code.

Section 8. Subordination of the Lien to Mortgages. The lien created in this Article IV shall be subordinate to valid purchase money liens or mortgages and any valid lien securing the cost of construction of home improvements. Sale or transfer of any Lot shall not affect said lien; however, the sale or transfer of any Lot which is subject to any valid first purchase money lien or mortgage, or valid lien securing the construction of improvements pursuant to a judicial or nonjudicial foreclosure under such lien or mortgage, or any conveyance in satisfaction of such debt (commonly called a "deed in lieu of foreclosure") shall extinguish the lien securing such assessment or charge only as to payments which became due prior to such sale or transfer and additionally shall not cause a merger of such lien with the title conveyed in satisfaction of such debt. No sale or transfer shall relieve such Lot or the Owner thereof from liability from any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board of Directors may determine. A Mortgagee shall not be required to collect any of the charges or assessments imposed against a Lot.

Section 9. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

ARTICLE V INSURANCE

Section 1. The Association, through its Board of Directors or its duly authorized agent, shall have the authority to obtain the following types of insurance policies:

- (a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or its equivalent, affording protection against loss or

damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and other risk as shall be customarily carried with respect to projects similar in construction, location and use; and

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds shall be of the kind and in an amount the Association deems necessary for the protection of the Owners.

(d) Premiums for all such insurance policies carried by the Association shall be a common expense payable from the annual assessments on all of the Lots. Liability and property insurance for Lots and the contents of residences shall be the responsibility of each individual Owner. All proceeds from policies held by the Association shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least two (2) of the members of the Board of Directors of the Association, or by an agent duly authorized by the Board of Directors. In no event shall the insurance company or the bank or other financial institution holding proceeds of a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies shall be used by the Association only for the benefit of its Members, and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, such proceeds shall be used to repair, restore and rebuild such building or improvements. In the latter event, the Board of Directors shall advertise for sealed bids from licensed contractors, and upon acceptance of a bid received thereby, may negotiate with the contractor, who shall be required to provide full performance and payment bonds for the repair, reconstruction or rebuilding of such destroyed improvements or buildings. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding said improvements to their original condition, the Association shall levy a special assessment for capital improvements against all

Owners to make up the deficiency, which shall be undertaken only upon compliance with all the requirements for imposition of special assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. No building, fence, wall or other structure shall be commenced, erected or maintained on any portion of the Property nor shall any exterior addition to or change or alteration therein be made until the plans or specifications therefor have been submitted for approval by the Board of Directors or by an Architectural Control Committee (herein referred to as the "Committee") comprised of at least three (3) members appointed by the Board of Directors.

Section 2. Duties and Powers. The purpose of the Committee shall be to protect the architectural and aesthetic integrity of the Subdivision in accordance with the provisions of this Declaration. No building, fence, wall, or other structure or improvement of any nature shall be placed, constructed, erected, or maintained on any Lot, nor shall any exterior addition to or change or alteration therein be made until the construction plans and specifications for the same shall have been submitted to and approved in writing by the Committee as to: (a) conformity and harmony of external design and location in relation to surrounding structures and topography, and (b) quality of workmanship and materials. Any plans and specifications to be submitted to the Committee shall specify, in such form as the Committee may reasonably require, the location upon the Lot where the improvements are to be placed and the dimensions thereof, as well as appropriate information concerning the structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, color scheme, and materials of the proposed improvements or alterations. The Committee shall also have the right, where not otherwise set forth herein, to specify:

- (a) Minimum setbacks;
- (b) The location, height and extent of fences, walls, or other screening devices;
- (c) The orientation of structures and landscaping on Lots with respect to streets, walks, and structures on adjacent properties; however, the Committee shall not require setbacks further away from the streets than any platted building line; and
- (d) A limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement.

Further, no person exercising any prerogative of approval or disapproval by or on behalf of the Committee shall incur any liability by reason of the good faith exercise thereof.

Section 3. Committee Approval. Any approval or disapproval by the Committee or its designated representatives on any of the above matters shall be in writing and either conveyed in person or by first class mail, postage prepaid. In the event said Committee or its designated representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, then such plans and specifications shall be deemed approved. The Committee shall have the right, exercisable at its discretion, to grant variances to the architectural restrictions in specific instances where the Committee in good faith deems that such variance does not adversely affect the architectural and aesthetic integrity of the Subdivision or the common scheme of the development. If the Committee shall approve a request for a variance, the Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested, describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved, and signed by a majority of the then members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Lot(s) and with the Plat. Failure by the Committee to respond within thirty (30) days to a request for a variance shall operate as a denial of the variance.

Section 4. No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors with respect to the construction of any improvements within the Subdivision. Specially, the approval by the Committee or the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications, or other materials submitted with respect to any other residential construction by such person or other Owner.

ARTICLE VII

EXTERIOR MAINTENANCE

Section 1. Obligation. All Living Units and other buildings located within the Subdivision must be kept in good repair and must be painted when necessary to preserve their attractiveness. Grass, vegetation and weeds on each Lot shall be cut as often as may be necessary to maintain the same in a neat and attractive condition. All damaged, diseased beyond recovery, or dead trees shall be cut and removed from any Lot at the expense of

Owner. Vacant Lots shall be mowed and maintained in good appearance by the Owner and shall not be used for dumping of rubbish, trash, rubble, or soil, except that Declarant or the Committee may designate fill areas into which materials specified by Declarant or the Committee may be placed. The Association may plant, install and maintain shrubbery and other screening devices around utility boxes, transformers and other above-ground utility equipment. The Association shall have the right to enter upon the Lots to plant, install, maintain, and replace such shrubbery or other screening devices. Owners of residences shall construct and maintain a fence or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and wood pile or storage piles.

Section 2. Failure to Maintain. In the event any Owner of any Lot in the Subdivision fails to maintain the Lot and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after seven (7) days' written notice to the Owner of said Lot, setting forth the action intended to be taken by the Association and after approval by a two-thirds (2/3) vote of the Board of Directors, shall have the right, but not the obligation, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements located thereon. To the extent necessary to (a) prevent infestation by insects, rats and other vermin or pests; (b) diminish fire hazards; and (c) accomplish any of the needed repair, maintenance and restoration, the Association shall have the right, but not the obligation, through its agents and employees, to enter any residence or improvement located upon such Lot. Neither the Association nor its agents or employees shall be liable, and are expressly relieved from any liability, for trespass or other tort in connection with the performance of the exterior maintenance and other work authorized in this Article. The cost of such exterior maintenance and other work shall be the personal obligation of the Owner of the Lot on which it was performed and shall become a part of the assessment payable by said Owner and secured by the liens herein retained.

ARTICLE VIII **USE RESTRICTIONS**

Section 1. Residential Use. Every Lot in the Subdivision is hereby restricted to one residential dwelling for single-family residential use only. As used herein, the term "residential use" shall be held and construed to exclude hospitals, clinics, apartment houses, duplex houses, garage apartments used for rental purposes, boarding houses, hotels, and commercial and professional uses whether from homes, residences, or otherwise, and all such uses of said property are hereby expressly prohibited.

Section 2. Business Activity. No business activities of any kind whatsoever shall be conducted in any portion of the Subdivision; provided, however, the foregoing covenant shall not apply to the business activities of the Declarant, its agents and assigns, during the construction and sale period, or of the Association, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 3. Common Area. The Common Area shall not be used for any commercial purposes; however, this provision shall not preclude the Association from charging reasonable fees for the use of the recreational facilities which are part of the Common Area.

Section 4. Exemption for Sale of Lots. Notwithstanding any provisions herein contained to the contrary, it shall be permissible for Declarant or the builder of any residence to maintain during the period of construction and sale of Lots within the Subdivision upon any portion of a Lot such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of improved Lots including, without limitation, a business office, storage area, construction yards, model units, and a sales office.

Section 5. Animals and Livestock. The raising, breeding or keeping of animals, livestock or poultry of any kind on any Lot in the Subdivision is strictly prohibited; provided, however, consistent with the Living Unit's use as a residence, dogs, cats and other household pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purposes, and further provided, no more than two (2) such pets shall be kept on a Lot. All pets must be properly vaccinated and tagged for identification and penned in an approved enclosure. No pet may be chained or leashed outside an enclosure unless being walked on a leash. Whenever a pet is removed from its enclosure, it must be in the possession of its owner or the owner's agent and must be restrained by a proper leash. The Board of Directors of the Association shall have the authority to authorize the capture and removal of any dogs running loose in the Subdivision without a leash. No other type of animal except small household pets such as hamsters, fish and birds shall be allowed in the Subdivision without the prior written consent of the Board of Directors.

Section 6. Mineral Production. No drilling, development operations or oil refining, quarrying or mining operations of any kind shall be permitted upon any portion of the Subdivision, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Subdivision. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Subdivision. Declarant waives its right to use the surface of any Lot for the exploration, development or production of oil, gas, or other minerals from the mineral estate, if any, owned or retained by Declarant.

Section 7. Disposal of Trash. No portion of the Subdivision shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other wastes. All rubbish, trash, garbage or other waste shall be kept in sanitary containers and out of sight of the Common Area and any street or adjacent Lot, except on days designated by the Association for pick-up of such garbage. For wastes that are prohibited for collection by the Association's refuse hauler, the Owner of each Lot shall remove such prohibited matter from his Lot at his

expense at regular intervals or as directed by the Association. No incinerator may be maintained on any portion of the Subdivision.

Section 8. Storage, Parking and Repair of Vehicles. No boat, mobile home, trailer, boat rigging, truck larger than a one (1) ton pickup, bus or unused or inoperable automobiles shall be parked or kept in the street in front of, or to the side of, any Lot or on any Lot. Operable automobiles must be parked in the garage or on the concrete portion of the driveway and shall not be parked in the grass portion of the yard of any Lot. No vehicle may be parked within any part of any street in the Subdivision for more than twenty-four (24) hours at a time, and vehicles shall not be moved from place to place in the Subdivision to avoid the intent of this prohibition. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature, which shall not exceed forty-eight (48) hours.

Section 9. Construction Activity and Building Materials. Except in an emergency or when unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only between the hours of 7:00 a.m. and 10:00 p.m. The Owner shall be responsible for obtaining all building permits or other approvals that may be required prior to such construction activities. No Lot shall be used for storage of any material except that required for landscaping or construction, which materials shall not be placed or stored upon any Lot until the Owner is ready to commence construction of improvements on the Lot as approved by the Committee, at which time such materials shall be placed within the property lines of the Lot upon which the improvements are to be constructed, and shall not be placed in the street or upon any common areas.

Section 10. Signs. No advertising signs (except not more than one five (5) square foot "For Rent" or "For Sale" sign per Lot), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on any portion of the Subdivision. Declarant and the Association, however, shall have the right to erect identifying signs at each entrance of the Subdivision, and Declarant may place and maintain, or permit to be placed and maintained, such builder advertising signs as it may desire in its sole discretion in connection with the construction of homes in the Subdivision. The Board of Directors of the Association shall have the right to enter upon any Lot for the purpose of removing any sign being maintained thereon which violates this Section. In no event shall the Association or its Board of Directors be liable to any person or persons for any damages of whatever nature for removing such signs in a reasonable manner.

Section 11. Clotheslines. No outside clothesline shall be erected or maintained on any Lot within sight of the Common Area or any street or adjacent Lot.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried on upon any portion of the Subdivision, nor shall anything be done thereon which may become an annoyance or nuisance to the residents of the Subdivision or in any way endanger the health, safety, and welfare of the residents.

Section 13. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the laws of the State of Texas, or the United States, or of the police, health, sanitary, building, or fire codes, regulations or instructions relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 14. Control of Sewage Effluent. No outside toilets or privies shall be permitted. Disposal or discharge of wastewater from any Lot that would result in raw, untreated, or partially treated sewage being carried into the streets or any land of the Subdivision or into any body of water is strictly prohibited. Drainage of storm water into the sanitary sewage system shall not be permitted; provided, however, that swimming pool drains and backwash systems shall be connected to the sanitary sewer system. No septic tank or other means of sewage disposal not connected to the sanitary system will be permitted.

Section 15. Water Supply. No individual water supply system shall be permitted on any Lot.

Section 16. Obstruction of Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Board of Directors of the Association.

Section 17. Non-Discrimination. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

Section 18. Fireworks. No fireworks of any kind shall be discharged on the Lots, Common Areas, or elsewhere within the Subdivision. For purposes of this section, "fireworks" shall mean any flammable, explosive, or combustible device or material capable of producing a striking display of light, noise or smoke.

ARTICLE IX

ARCHITECTURAL RESTRICTIONS

Section 1. Type of Living Unit. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single-family dwelling of not more than two (2) stories. Every residence shall have an attached or detached enclosed garage for at least two (2) full sized automobiles. Carports on Lots shall not be permitted. All structures

shall be of new construction and no structure shall be moved from another location onto any Lot.

Section 2. Type of Construction. Exterior walls may be of masonry, brick, wood, or other suitable material approved by the Committee and, unless otherwise approved by the Committee, the surface area of all exterior walls of the Living Unit shall consist of at least fifty-one percent (51%) brick or masonry. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Committee. Every garage and permitted accessory building (except a greenhouse) shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character that incorporates frame construction on the exterior shall be erected on any Lot unless such structure received at least two coats of paint at the time of construction or the exterior is of redwood or cedar material.

Section 3. Dimensions of Living Units. Unless otherwise approved by the Committee, no residential structure shall be erected, altered, placed, or permitted to remain on any Lot located in the Subdivision unless its living area has a minimum of fifteen hundred (1,500) square feet of usable floor space exclusive of porches and garage, and, in the case of a two-story structure, at least eight hundred (800) square feet on the ground floor.

Section 4. Location of Living Unit on Lot. Except as may be authorized in writing by the Committee, no building or structure shall be located nearer to any front, side or rear Lot line than as permitted by the utility easements and the setback lines shown on the recorded Plat of the Subdivision. Should two or more adjoining building sites be owned by the same or substantially the same Owner or Owners, said Owner or Owners shall be permitted to erect a structure across the building site lines common to the sites owned by said Owner or group of owners, and such construction shall not be considered to be in violation of the side or rear setback restrictions described above, so long as such improvements or structures are determined to consist of one continuous building, which determination shall be in the sole discretion of the Committee. Except as expressly approved in writing by the Committee, this provision shall in no way affect or change the side or rear setback lines hereinabove set forth, and these setback lines shall continue to apply to any building site or a group of building sites under the same or substantially the same ownership. For the purposes of these Restrictions, the front of each Lot shall coincide with and be the property line having the smallest dimension abutting a street. The Committee shall be empowered to grant exceptions for minor variances. The front building setback line shall be as hereinabove required. The Living Unit shall not be located on the Lot nearer than five (5) feet from either side property line except that on all corner Lots no structure shall be erected nearer than ten (10) feet from either side line abutting a street. No habitable portion of a dwelling shall be located on any interior lot nearer than ten (10) feet from the rear lot lines. No dwelling shall be located on any Lot within any utility easement located along the rear lot line. For purposes of this covenant, eaves, steps and

porches shall not be considered as a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 5. Metal Buildings. No metal buildings of any type shall be placed or constructed upon any Lot which is visible from any street or adjoining Lot.

Section 6. Roof Material. Roofs of all residences shall be constructed so that the exposed material is of a material and grade that complies with the FHA and VA guidelines in force on the date of construction of the roof involved, and of a color acceptable to the Committee.

Section 7. Driveways. Unless the Committee agrees otherwise, each Lot shall have driveway access to the street on which the Living Unit constructed thereon faces and shall not have driveway access to a street on which it may side, except that garages and driveways on the corner Lots may face the side street. Subject to the foregoing limitation, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to the street, including the portion of the street right-of-way, such driveway to have a minimum width of not less than nine (9) feet. The Owner shall repair at his expense any damage to the street occasioned by connection of the driveway thereto.

Section 8. Sidewalks. Before construction of any dwelling unit upon any Lot is complete, the Owner shall construct in the adjacent street right(s)-of-way a concrete sidewalk four (4) feet in width, parallel to the street curb. The sidewalk shall extend the full width of the Lot and on lots that abut on more than one street, the sidewalk shall extend the full width and depth of the Lot and up to the street curb at the corner. The sidewalk shall be constructed in accordance with specifications published by the Committee, if any, Montgomery County and any other federal, state or local agency having jurisdiction.

Section 9. Curb Ramps. If required by applicable federal, state or local law, curbs with accompanying sidewalks shall have curb ramps (depressions in the sidewalks and curb) at all crosswalks to provide safe and convenient movement of physically handicapped persons confined to wheelchairs. Such curb ramps will be provided at the time of construction of any sidewalks and shall be constructed in accordance with specifications provided by the applicable governmental authority.

Section 10. Traffic Sight Areas. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the street shall be permitted to remain on any corner Lot within the triangular area formed by the two (2) Lot lines abutting the streets and a line connecting them at points twenty-five (25) feet from their intersection or within the triangular area formed by the Lot line abutting a street, the edge line of any driveway or alley pavement and a line connecting them at points ten (10) feet from their intersection.

Section 11. Screening Fences. No fence or wall shall be erected on any Lot nearer to the street than the building setback lines as shown on the Plat. The erection of chain link fences facing upon a street is prohibited. Except as otherwise provided herein, plants, fences or walls utilized in protective screening areas as shown on the Plat or as required by FHA or VA shall be maintained to form an effective screen for the protection of the Subdivision throughout the entire length of such areas by the owners of the Lots adjacent thereto at their own expense. If the FHA or VA shall require said protective screening areas, then, whether or not the residence on any Lot affected by the screening requirements is built according to FHA or VA specifications, all screening devices shall be constructed according to FHA or VA requirements. Owners of residences shall construct and maintain a wooden fence not higher than six (6) feet or other suitable enclosure to screen from public view the drying of clothes, yard equipment, wood piles or other storage piles.

Section 12. Exterior Antennas. Without the prior written approval of the Committee, no exterior television antenna, television satellite reception disc or radio antenna of any sort shall be placed, allowed or maintained upon any portion of the improvements and structures to be located in the Subdivision, other than one conventional television antenna, which antenna must be erected in such a manner so that it is not visible from the street and is not more than five (5) feet above the highest point of the roof line of the structure.

Section 13. Temporary Structures. Except as otherwise permitted under Article VIII, Section 4, no structures of a temporary character, including tents, shacks, barns, or other outbuildings shall be placed on any Lot located within the Subdivision except for such temporary buildings utilized by the Declarant or the builder of any residence during the period of construction. Trailers, mobile homes, motor homes, or other similar vehicles shall not be used on any Lot at any time as a residence, either temporarily or permanently.

Section 14. Air Conditioners. No window or wall type air conditioners visible from any street shall be permitted.

Section 15. Mailboxes and Identifying Numbers. Mailboxes, house numbers and similar appurtenances used in the Subdivision must be harmonious with the overall character and aesthetic appeal of the community as determined by the Committee in its sole discretion. In the event the U.S. Postal Service requires the installation of some type of centralized mail delivery service, such as Neighborhood Box Units, then, in that event, the concrete slabs upon which such units are to be placed will be constructed by Declarant within the street right-of-way, and the Owner of the Lot abutting the immediate area where such slab and unit is located shall be responsible to maintain the appearance of the area surrounding such unit.

Section 16. Private Utility Lines. All electrical, telephone, cable television and other utility lines and facilities which are located on a Lot, and are not owned by a governmental

entity or a public utility company, shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the Committee.

Section 17. Solar Collectors. No solar collectors shall be installed without the prior written approval of the Committee. Such installation shall be consistent with the design of the residence. Whenever reasonably possible, solar collectors shall be installed in a location that is not visible from the public street in front of or to the side of any residence.

Section 18. Grass. The Owner of each Occupied Lot shall solid sod with grass the area between the front of the residence and curb line of the abutting street. The grass shall be of a type and within standards prescribed by the Committee. Additionally, no landscaping shall be installed, removed, replaced, altered or modified unless the plans thereof have been approved by the Committee. Grass and weeds shall be properly maintained to prevent unsightly appearance. Vacant Lots shall be mowed and maintained in appearance by the Owner. Dead or damaged trees or other shrubbery which might create a hazard to the property or persons within the Subdivision shall be promptly removed upon written request by the Association. If grass is not mowed and edged by the Owner, or if dead or damaged trees or shrubs are not removed by Owner, within ten (10) days after written request by the Declarant or the Association, the Declarant or the Association shall have the right to mow the grass or remove such trees and/or shrubbery at the Owner's expense and add the cost thereof to Owner's assessment. The Association and the Declarant shall not be liable for damage caused by such activities.

ARTICLE X MANAGEMENT AGREEMENTS

Each Owner hereby agrees to be bound by the terms and conditions of all management agreements entered into by the Association for the management of the Common Area and the facilities located thereon. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that the Association may cancel said management agreement by giving the other party thirty (30) days' written notice when so authorized by the vote of a majority of the membership votes in the Association entitled to be cast at a meeting of the Members or otherwise. In no event shall such management agreement be cancelled prior to the time the Association or its Board of Directors negotiate and enter into a new management agreement which is to become operative immediately upon the cancellation of the preceding management agreement. It shall be the duty of the Association or its Board of Directors to effect a new management agreement prior to the expiration of any prior management contract. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type.

ARTICLE XI
EASEMENTS

Section 1. General. Declarant shall have the right to grant, convey, dedicate or reserve easements over, on or under any part of the land in the Subdivision for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television, and other utility lines and facilities by separate recordable document for a period of ten (10) years after the date this Declaration is filed of record in the Official Public Records of Real Property of Montgomery County, Texas, regardless of whether at such time Declarant has title to the land within the easement(s). Thereafter, the Association shall have the power and authority to grant such an easement upon the vote of a majority of the membership votes entitled to be cast at any meeting of the Members of the Association or otherwise. An easement is also specifically granted to the United States Postal Service, its agents and employees, to enter upon any portion of the Subdivision in performance of mail delivery or any other postal services. An easement is also granted to all police, fire protection, ambulance, and similar persons to enter upon any portion of the Subdivision in performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company duly selected by the Association, to enter in or cross over the Common Area and/or any Lot to perform the duties of maintenance and repair as provided for herein. The easements provided for in this Article shall in no way affect any other recorded easements covering any portion of the Subdivision.

Section 2. Underground Electric Service. Underground single phase electric service shall be available to all dwellings or structures located in the Subdivision. The electric company shall have, and there is hereby dedicated, a two-foot wide underground easement along and centered on the underground electrical power service conductor installed and running from the electric company's easement shown on the recorded Plat of the Subdivision to the designated point of service on the dwelling or structure. This easement shall be for the maintenance of the electric company's conductors and metering equipment. This two-foot easement for underground electrical service may be crossed by driveways, walkways and patio areas, provided the Declarant or builder makes prior arrangements with the electric company furnishing such service; however, this easement shall be kept clear of all buildings. Neither the Declarant nor the electric company using this easement shall be liable for any damage done by either of them, or their respective assigns, agents, employees, or servants, to shrubbery, trees, flowers, or other improvements located on the land covered by such easement. The underground electrical distribution system shall consist of overhead primary feeder circuits constructed on wood or steel poles, single or three phase, as well as underground primary and secondary circuits, pad mounted or other types of transformers, junction boxes, and such other appurtenances as shall be necessary to make underground service available. The Owner of each Lot containing a single dwelling unit shall, at his or its own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of

electric company's metering at the structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. Declarant has either by designation on the plat of the Subdivision or by separate instrument granted necessary easements to the electric company providing for the installation, maintenance and operation of its electric distribution system and has also granted to the various homeowners reciprocal easements providing for access to the area occupied by and centered on the service wires of the various homeowners to permit installation, repair and maintenance of each homeowner's owned and installed service wires. In addition, the Owner of each Lot containing a single dwelling unit shall at his or its own cost, furnish, install, own and maintain a meter loop (in accordance with the then current Standards and Specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for each dwelling unit involved. For so long as underground service is maintained in the Subdivision, the electric service to each dwelling unit therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system in the Subdivision at no cost to Declarant (except for certain conduits, where applicable, and except as hereinafter provided) upon Declarant's representation that the Subdivision is being developed for residential dwelling units, which are designed to be permanently located where originally constructed (such category of dwelling units expressly to exclude mobile homes) which are built for sale or rent. Should the plans of the Declarant in the Subdivision be changed so as to permit the erection therein of one or more mobile homes, Company shall not be obligated to provide electric service to any such mobile home unless (a) Developer has paid to the electric company an amount representing the excess in cost, for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to serve such Subdivision or (b) the Owner of each affected lot, or the applicant for service to any mobile home, shall pay to the electric company the sum of (1) \$1.75 per front lot foot, it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such lot or dwelling unit over the cost of equivalent overhead facilities to serve such lot or dwelling unit, plus (2) the cost of rearranging, and adding any electric facilities serving such lot, which arrangement and/or addition is determined by electric company to be necessary. Further, all of the Subdivision shall be subject to such easements, restrictions, covenants, and conditions that are required to be imposed against the Subdivision by Declarant in any agreement entered into with Houston Lighting and Power Company for the delivery of underground electrical service to the Subdivision (the "Utility Agreement"). Accordingly, the recordation of any such Utility Agreement in the Official Public Records of Real Property of Montgomery County, Texas, shall constitute an amendment to the Declaration that includes in this Declaration and imposes against the

Subdivision any and all easements, restrictions, covenants, and conditions required under said Utility Agreement.

Section 3. Cable Service. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies, and Declarant shall have the right and power in such agreement or agreements to grant such cable television company or companies the uninterrupted right to install and maintain cable communications and related ancillary equipment and appurtenances within the utility easements or rights-of-way reserved and dedicated herein and in the Plat referenced above. Declarant agrees to transfer and assign any such agreement to the Association, and Declarant does hereby reserve unto the Association the sole and exclusive right to obtain and retain all income, revenue, and other things of value paid or to be paid by such cable television company or companies pursuant to any such agreements between Declarant or the Association and such cable television company or companies.

ARTICLE XII **ANNEXATION**

Additional property and Common Area may be annexed into the jurisdiction of the Association upon the favorable vote of two-thirds (2/3) of each class of Members at a meeting of the Members or otherwise; provided, however, the additional residential property or Common Area that is a part of a general plan submitted to and approved by the FHA and VA may be annexed by the Declarant without approval by Members of the Association. Annexation of additional property to this Subdivision shall encumber said property with all of the covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration and shall become effective on the date an instrument signed and acknowledged by the owner of said annexed property and the appropriate annexing authority (either Declarant or the Association) is filed for record in the Official Public Records of Montgomery County, Texas, evidencing the annexation. Each such instrument evidencing the annexation of additional property shall describe the portion of the property comprising the Lots and Common Area. The funds resulting from any assessment, whether annual or special, levied against any property hereinafter annexed to the Subdivision may be combined with the funds collected from the Owners of Lots in the Subdivision and may be used for the benefit of all property and all Owners in the manner hereinabove provided.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by reason of the provisions contained in this Declaration of Covenants, Conditions and Restrictions. Failure of the

Association or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter. Costs and reasonable attorneys' fees incurred by the Association in any such enforcement action shall be reimbursed to it from any Owner found to be in the violation of the covenants and restrictions contained in this Declaration of Covenants, Conditions and Restrictions. Each such Owner, by his acceptance of a deed to any Lot in the Subdivision, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges. No Owner may waive or otherwise avoid liability for the charges provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Duration and Amendment.

(a) The covenants, conditions, restrictions, reservations, liens, and charges set forth in this Declaration of Covenants, Conditions and Restrictions shall run with the land and shall be binding upon and inure to the benefit of the Association, all Owners, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this instrument is filed with the County Clerk of Montgomery County, Texas, for recordation in the Official Public Records of Real Property of Montgomery County, Texas, after which time said covenants, conditions, restrictions, reservations, liens, and charges shall be automatically extended and renewed for successive periods of ten (10) years each, unless prior to said renewal date an instrument signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision is filed for record with the County Clerk of Montgomery County, Texas, altering, rescinding or modifying said covenants and restrictions in whole or in part as of said renewal date. Notwithstanding anything to the contrary herein contained, it is expressly understood and agreed that the Owners of two-thirds (2/3) of the total number of the Lots in the Subdivision shall always have the power and authority to amend this Declaration of Covenants, Conditions and Restrictions and such amendment shall become effective on the date an instrument, signed and acknowledged by the then Owners of not less than two-thirds (2/3) of the total number of Lots in the Subdivision, is filed for record in Montgomery County, Texas, so amending this Declaration of Covenants, Conditions and Restrictions. In addition, Declarant shall have the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration of Covenants, Conditions and Restrictions by any instrument in writing duly signed, acknowledged, and filed for record in the Official Public Records of Real Property of Montgomery County, Texas, for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or for the purpose of complying with any statute, regulation, ordinance, resolution, or order of the FHA, the VA, or any federal, state, county, or municipal governing body, or any agency or department thereof; provided, however, that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this

Declaration of Covenants, Conditions and Restrictions and any supplemental declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or mortgagee of any Owner.

(b) All amendments hereof shall be approved by the FHA and VA while the Declarant retains control of the Subdivision.

Section 3. Canvassing. Where this Declaration of Covenants, Conditions, and Restrictions requires that an instrument be executed by a certain percentage or number of the Members or Owners, such instrument may be circulated among the Members or Owners by a door-to-door canvass and need not be presented at any meeting of the Members or otherwise, provided the Board of Directors of the Association is notified in writing by certified mail, return receipt requested, of the fact that an action is contemplated by a canvassing of the Members or the Owners.

Section 4. Severability. If any provision of this Declaration of Covenants, Conditions and Restrictions or the application thereof to any person or circumstance shall, for any reason or to any extent, be invalid or unenforceable, neither the remainder of this Declaration of Covenants, Conditions and Restrictions nor the application of such provision to other persons or circumstances shall be affected thereby, but shall be enforced to the fullest extent permitted by law.

Section 5. Gender and Number. Whenever used, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall be applicable to all genders.

Section 6. Headings. The paragraph titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing the text of such paragraphs.

Section 7. Agreement of Existing Association. The Fox Run Maintenance Association, Inc., has executed this Declaration to evidence its agreement with the provisions hereof, and its consent to the annexation of Fox Run, Section Twelve into the Association. The Association further acknowledges that all Owners of Lots in Fox Run, Section Twelve shall have all the privileges, benefits and responsibilities of the owners of any other residential property within the jurisdiction of the Association and that the Association's obligation shall extend to and include all the Property included in Fox Run, Section Twelve.

IN WITNESS WHEREOF, this Declaration is executed on this the 30th day of August, 2004.

ELAN DEVELOPMENT, L.P.
a Texas limited partnership

By: ELAN, L.C., a Texas Limited
Liability Company, General Partner

By: [Signature]
M. G. Manners, Managing Member

FOX RUN MAINTENANCE ASSOCIATION,
INC., a Texas non-profit corporation

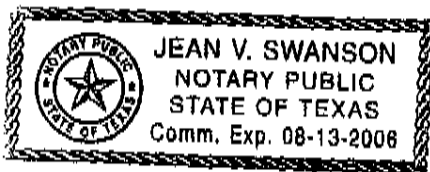
By: [Signature]
Name: Kerri M Baker
Title: President

ATTEST:

By: [Signature]
Name: Kerri M Baker
Title: President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this the 30th day of AUGUST, 2004, by M G. Manners, Managing Member of ELAN L.C., a Texas limited liability company, on behalf of such limited liability company, acting in its capacity as General Partner of ELAN DEVELOPMENT, L.P., a Texas limited partnership.



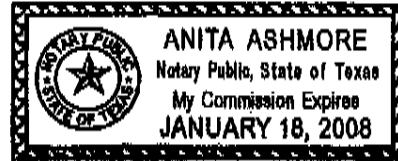
[Signature]
Notary Public in and for the State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on this 3rd day of September 2004, by Kewon M. Dack, as President of FOX RUN MAINTENANCE ASSOCIATION, INC., a Texas non-profit corporation, on behalf of said corporation.

Anita Ashmore

Notary Public in and for the State of Texas



When Recorded Return to:
Clinton D. Pendleton
Elan Development, L.P.
211 Highland Cross Drive, Suite 101
Houston, Texas 77073-1700

RECORDS MEMORANDUM
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.

FILED FOR RECORD

2004 SEP -7 PM 2: 30

Mark Turnbull
COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was filed in File Number Sequence on the date and at the time stamped herein by me and was duly RECORDED in the Official Public Records of Real Property at Montgomery County, Texas.

SEP 07 2004



Mark Turnbull
County Clerk
Montgomery County, Texas