

DECLARATION OF PROTECTIVE  
COVENANTS FOR OLD LANGHAM PLANTATION, SECTION ONE

THE STATE OF TEXAS           §  
COUNTY OF SAN JACINTO       §

THIS DECLARATION is made on the date hereinafter set forth by H-MP-USH COMPANY, a Texas general partnership (hereinafter, together with any successor, called "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Article III of this Declaration and desires to adopt a uniform plan for the orderly development of such property:

NOW, THEREFORE, Declarant does hereby impose upon the real property described in Article III hereof, the following covenants, restrictions, charges, easements and liens (hereinafter collectively referred to as the "Protective Covenants"), which shall be covenants running with the land and shall be binding upon any purchaser, grantee, owner or lessee of any portion of the real property described in Article III and upon the respective heirs, executors, administrators, devisees, successors and assigns of such purchaser, grantee, owner or lessee.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

- (a) "Association" shall mean and refer to Old Langham Plantation Association, Inc., a Texas non-profit corporation, its successors and assigns.
- (b) "Committee" shall mean and refer to the Architectural Control Committee established in accordance with Article VII hereof.
- (c) "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plat, except the Tracts and the public streets shown thereon, together with such other land as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to the "Common Properties (any Common Property)" shall mean and refer to Common Properties as defined respectively in the Declaration and all Supplemental Declarations.
- (d) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all Owners in the Subdivision constructed on portions of one or more Tracts or on

acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of the Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation or storage or protection of equipment; fountains; statuary; sidewalks; common driveways; landscaping; swimming pools; tennis courts; boat ramps; and other similar and appurtenant improvements. References herein to the Common Facilities (any Common Facility) shall mean and refer to Common Facilities (any defined respectively in the Declaration and all Supplemental Declarations).

(e) The "Declaration" shall mean and refer to this Declaration of Protective Covenants for Old Langham Plantation, Section One.

(f) "Member" and/or "Members" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV hereof, together with all the Owners in the Subdivision Supplemental Declarations.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Tract; but, notwithstanding any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to the "Owners (each Owner)" shall mean and refer to Owners as defined in the Declaration and all Supplemental Declarations.

(h) "Properties" shall mean and refer to the properties described in Section 1 of Article III hereof, which are subject to this Declaration. References herein to "Properties" shall mean and refer to the Properties as defined in the Declaration and all Supplemental Declarations.

(i) The "Subdivision" shall mean and refer to Old Langham Plantation, Section One, all subsequent sections of Old Langham Plantation expressly brought within the plan of this Declaration, and any other real property (including specifically, but without limitation, all or portions of other subdivisions being or to be developed by Declarant or affiliated entities) expressly brought within the plan of this Declaration.

(j) "Subdivision Plat" shall mean and refer to the map or plat of Old Langham Plantation, Section One, recorded in Volume 6, Page 47 of the Map Records of San Jacinto County, Texas, or any subsequently recorded replat thereof, and the maps or plats of all subsequent sections of Old Langham Plantation and any other real property (including, but without limitation, all or portions of other subdivisions being or to be developed by Declarant or affiliated entities) expressly brought within the plan of this Declaration, as recorded in the Map Records of San Jacinto County, Texas, or any subsequently recorded replat(s) of same.

(k) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Protective Covenants bringing additional property within the plan of this Declaration under the authority provided in this Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

(l) "Tract" and/or "Tracts" shall mean and refer to each of the lots shown on the Subdivision Plat. References herein to the "Tracts (each Tract)" shall mean and refer to Tracts as defined respectively in the Declaration and all Supplemental Declarations.

EASEMENTS

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, easements shown thereon, and the Subdivision Plat further establishes dedications, limitations, reservations and restrictions applicable to the Properties. Further, Declarant and Declarant's predecessors in title have heretofore granted, created and dedicated by several recorded instruments, certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Properties and of record are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Properties.

Declarant hereby reserves the right to make changes in and additions to the above described easements for the purpose of most efficiently and economically installing improvements within the Properties. Further, Declarant hereby reserves in favor of Declarant the right, without the necessity of joinder of any Owner or other person or entity (and each and every Owner, by its acceptance of a Deed covering any portion of the Properties, hereby grants to Declarant the right), to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes (including, without limitation, gas, electricity, water, sanitary sewer, telephone and drainage) in favor of any person or entity furnishing or to furnish utility services to the Properties in, on or under that portion of the Properties along and on either or both sides of any Tract boundary line, each of which easements shall have a maximum width of eight (8) feet on each side of said Tract boundary line.

Section 2. Title to Easement Estates and Appurtenances Not Conveyed. Title to any Tract conveyed by Declarant by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Tract or any part thereof to serve said Tract or any other portion of the Properties, and the right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant. This Section 2 shall not be construed or operate to reserve or exclude from any deed or other conveyance of any Tract, any portion of the fee estate in such Tract, it being intended that only the easement estates, facilities and appurtenances referred to above be reserved.

Section 3. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances there-to, on, above, across and under the Properties within the public

utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Properties until approved by Declarant or the Association's Board of Trustees. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements from time to time existing, and to trim overhanging trees and shrubs located on portions of the Properties abutting such easements.

Section 4. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service vehicles and other service vehicles, and to the operators thereof, to enter upon the Properties in the performance of their duties. Further, an easement is hereby granted to the Declarant, the Association and the Committee, their respective officers, agents, employees, and management personnel to enter upon the Properties to render any service or perform any of their respective functions provided for herein.

Section 5. Surface Areas. No Owner shall construct or maintain, or allow to be constructed or maintained, any structure (except fences) in or on the surface area of any easement affecting his Tract. Notwithstanding the foregoing, the surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers, and the erection and construction of fences (as provided for in Section 8 of Article VIII). However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation or fencing as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

#### ARTICLE III

##### Property Subject to this Declaration

Section 1. Description. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of the following:

All of Old Langham Plantation, Section One, a subdivision in San Jacinto County, Texas according to the map or plat thereof recorded in Volume 6, Page 47 of the Map Records of San Jacinto County, Texas (or any subsequently recorded plat thereof);

All of which real property is sometimes hereinafter referred to as the "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to the plan of the Declaration in the following manner:

(a) Additions by Declarant. The Declarant, its successors and assigns, shall have the right to bring within the plan of the Declaration additional properties in future stages of the development (including, without limitation, subsequent sections of Old Langham Plantation and all or portions of other subdivisions being or to be developed by Declarant or affiliated entities), upon the approval of the Board of Trustees of the Association, in its sole discretion. Any additions authorized under this and the

succeeding subsection shall be made by filing of record a Supplemental Declaration of Protective Covenants with respect to the additional property which shall extend the plan of the Protective Covenants of the Declaration to such property, and the execution thereof by members of the Board of Trustees of the Association shall constitute all requisite evidence of the required approval thereof by such Board of Trustees. Such Supplemental Declaration (i) must impose an annual maintenance charge assessment on the property covered thereby, on a uniform basis, which fairly relates to the maintenance charge and assessments imposed by the Declaration and the other, existing Supplemental Declarations, and (ii) shall provide for special assessments on substantially the same basis as is provided in this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in the Declaration as may be applicable to the additional lands. Depending on the manner in which such additional lands are ultimately developed, the services provided by the Association which relate to the Properties and to all or portions of such additional lands may vary in value or in kind. Therefore, the Board of Trustees, in its discretion and considering such facts as it deems pertinent relative to the relationship of the Association to such additional lands and the Owners therein, may approve Supplemental Declarations providing for annual and special maintenance charges and assessments on such additional lands which differ in amount, basis or method of computation from those provided for in the Declaration or other Supplemental Declarations.

(b) Other Additions. Upon the approval of the Board of Trustees of the Association, in its sole discretion, the owner of any property who desires to add it to the plan of the Declaration and to subject it to the jurisdiction of the Association may file of record a Supplemental Declaration of Protective Covenants upon the satisfaction of the conditions specified in subsection (a) above.

(c) Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the respective covenants and restrictions applicable to the properties of the merging or consolidating associations as one plan. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by the Declaration or any Supplemental Declaration.

#### ARTICLE IV

##### The Association

Section 1. Organization. The Declarant shall cause the Association to be organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 2. Purpose. The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the Members, to collect the annual maintenance charges and special assessments imposed by or provided for in the Declaration and all Supplemental Declarations, to administer the Maintenance Fund, and to provide for the maintenance, repair, preservation, upkeep and protection of the Common Properties and the Common Facilities. Further, the Association shall have such

other purposes as are stated in its Articles of Incorporation which are consistent with the provisions of the Declaration and all Supplemental Declarations.

Section 3. Trustees. The Association shall act through a five (5) member Board Of Trustees, which shall manage the affairs of the Association. The initial Trustees of the Association shall be selected by Declarant. Each initial Trustee shall serve for an initial term of ten (10) years and, thereafter, until his successor is duly elected and qualified. After the expiration of the term of the initial Trustees, the Members shall elect a Board of Trustees as provided for in its Bylaws. Any vacancy, from what-ever cause, occurring in the Board of Trustees during the initial ten (10) year term shall be filled by appointment made by the remaining Trustee or Trustees. The person appointed by the remaining Trustee or Trustees to fill such vacancy shall serve for the remainder of the initial ten (10) year term and until his successor is duly elected and qualified. The Trustees shall have the power to select one or more advisory trustees from the residents of the Subdivision to serve for such periods of time as the Board of Trustees shall deem appropriate, for the purpose of providing advice and counsel to the Board of Trustees, provided that such advisory trustees shall have no right to act on behalf of the Association.

Section 4. Members. Each Owner, whether one or more persons or entities, shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall automatically shall automatically follow the record ownership of each Tract and may not be separated from such ownership. Whenever the record ownership of any Tract passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 5. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all the Members of the Association, with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Tract in which they hold the ownership interest required for membership by the Declaration or any Supplemental Declaration. When more than one person holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they among themselves determine, but, in no event, shall more than one vote be cast with respect to any Tract.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to eight (8) votes for each Tract in which it holds the interest required for membership by the Declaration or any Supplemental Declaration; provided, that the Class B Membership shall cease and become converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. Thereafter, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Tract in which it holds the interest required for membership by the Declaration or any Supplemental Declaration.

Section 6. Title to Common Properties. The Declarant may retain legal title to the Common Properties and Common Facilities until such time as it has completed improvements thereon and until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to the Common Properties and Common Facilities has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to the Common Properties and Common Facilities granted to the Association in the Declaration and all Supplemental Declarations.

ARTICLE V

Property Rights in the Common Properties  
and Common Facilities

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article V, each Member shall have a common right and easement of enjoyment in and to the Common Properties and Common Facilities, and such right and easement shall be appurtenant to and shall pass with the title to each Tract in the Subdivision.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created in this Article V shall be subject to the following:

- (a) The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of any recreational Common Facilities, and to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Properties and Common Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Properties and Common Facilities by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Properties and Common Facilities or any part thereof at the same time; and
- (b) The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility company for any service to the Subdivision or any part thereof; and
- (c) The right of the Association to transfer title to any storm sewer line, sanitary sewer line, water line, or any other utility facility or equipment situated in any part of the Common Properties and owned by the Association to any public or political authority or agency or to any utility company rendering or to render services to the Subdivision or any part thereof; and
- (d) The right of the Association to convey or dedicate such portions of the Common Properties as its Board of Trustees may deem appropriate to governmental authorities, political subdivisions or other persons or entities for use as the location of schools, churches, and hospitals, or for other similar purposes related to the health, safety, and welfare of the Members; and
- (e) The right of the Association to enter into management and/or operating contracts or agreements relative to the maintenance and operation of the Common Properties and Common Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; the right of the Association to operate recreational facilities and related concessions located on the Common Properties; the right of the Association to enter into lease agreements or concession agreements granting leasehold,

concession, or other operating rights relative to the Common Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; and

(f) The right of the Association to suspend the voting rights of a Member or his right to use any recreational Common Facility during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge or special assessment against his tract; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of a published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in the Declaration and any Supplemental Declarations or in its Bylaws or at law or in equity on account of any such default or infraction; and

(g) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II hereof, and in Supplemental Declarations; and

(h) The restrictions as to use of the Common Properties provided for in Article VIII hereof.

Section 3. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Properties and Common Facilities, together with all easement rights granted to Members in the Declaration and all Supplemental Declarations, to the members of his family, his tenants, or contract purchasers who reside on his Tract. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the record title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.

#### ARTICLE VI

##### Annual Maintenance Charge

Section 1. The Maintenance Fund. All funds collected by the Association from the maintenance charge provided for in this Article, together with all funds collected by the Association from the annual maintenance charge imposed on the Tracts in the Subdivision by the Declaration and all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund". The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members for the following purposes, to-wit: the promotion of the health, safety, recreation and welfare of the Members, including, without limitation, the installation, construction, erection and relocation of improvements related to the enhancement and beautification of the Common Properties and the Common Facilities, and any other areas provided by the Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as public streets and roads in the Subdivision, shrubbery, trees, walkways and street lights, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of the Subdivision by the Members; mosquito and insect control (if any) within the Subdivision; the maintenance of a security patrol or other security measures (if any) deemed appropriate by the Board of Trustees of the Association; payment of legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, conditions and restrictions affecting the Properties; payment of all reasonable and necessary expenses in connection with the collection and administration of the annual maintenance charge, any special assessments and any Section 25 assessments (as that term is



defined in Article VIII, Section 25 below), and doing such other things and taking such other actions as are necessary or desirable in the opinion of the Association to keep the Properties and the Subdivision neat and in good order, or which is considered of general benefit to the Owners in the Subdivision, it being understood that the judgment of the Association in the expenditure of the Maintenance Fund shall be final and conclusive so long as such judgment is exercised in good faith.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in the Subdivision which are situated on property owned by Declarant (or affiliated entities), but which then has not been brought within the plan of the Declaration, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board of Trustees shall determine, in its sole discretion. Further, if all or any such Common Facilities situated on property then not subject to the plan of the Declaration also are for the use and benefit of persons or entities other than the Owners in the Subdivision, the Association shall have the right and authority to enter agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee), in such instances and on such terms as its Board of Trustees may deem appropriate and acceptable, obligating the Association to contribute, from the Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Association in good faith and in pursuance of the Declaration and any Supplemental Declaration shall, as between the Members and the Association, be binding and conclusive on all Members.

In the event Declarant shall operate any Common Facility in the Subdivision, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from such operation, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Trustees of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Properties and Common Facilities and accrued subsequent to the recording of the Declaration, and prior to the date on which title to such Common Properties and Common Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 2. Covenant for Annual Maintenance Charge. Subject to the provisions set forth below in this Section 2 and in Sections 3 and 4 of this Article VI, each Tract in the Properties is hereby severally subjected to and impressed with (a) an annual maintenance charge (herein sometimes referred to as the "full maintenance charge"), in the amount of ONE HUNDRED TWENTY AND NO/100 DOLLARS (\$120.00) per annum per Tract, which shall run with the land, be subject to increase or decrease and be payable as provided in Section 5 below, and (b) special assessments as provided for in Section 6 below.

Each Owner of a Tract, by his claim or assertion of ownership or by accepting a deed to any such Tract, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments provided for in this Article, which are assessed against his Tract and/or assessed against him by virtue of his ownership of such Tract, as the same shall become due and payable, without demand. The charges and assessments herein provided for, together with interest, costs of court and reasonable attorney's fees incurred by the Association (as hereinafter more particularly provided), shall be a charge and a continuing lien upon each Tract, together with all improvements thereon, and shall also be the personal obligation of the person who was the Owner of the Tract at the time the obligation to pay such charge or assessment accrued, but no Member shall be personally liable for the payment of any charge or assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charges or assessments by waiver of the use or enjoyment of the Common Properties or Common Facilities, or any part thereof, or by abandonment of his Tract or his interest therein.

Notwithstanding anything herein to the contrary, depending on the manner in which each portion of the Properties is ultimately developed, the services provided by the Association which relate to each portion of the Properties may vary in value and kind. Therefore, the Board of Trustees of the Association, in its discretion and considering such facts as it deems pertinent relative to the relationship of the Association to each portion of the Properties and each Owner, may provide, by written agreement with an Owner, for maintenance charges or assessments on a portion of the Properties which differs in amount, basis, or method of computation from that provided in this Section 2 of Article VI.

Section 3. Unimproved Tracts Owned by Declarant. Declarant shall pay one hundred percent (100%) of any special assessment levied or imposed against each Tract owned by Declarant under the terms of Section 6 of this Article VI. Declarant shall not be obligated or required to pay any portion of the then existing full maintenance charge applicable to any Tract owned by Declarant for a period of one (1) year after such Tract becomes subject to the plan of this Declaration. Commencing on the first day of the first succeeding calendar month after the end of such one (1) year period, Declarant shall be obligated to pay twenty percent (20%) of the then existing full maintenance charge applicable to such Tract [provided that for the calendar year in which such obligation commences, Declarant shall be obligated to pay that pro rata portion of twenty percent (20%) of such full maintenance charge then assessed, which shall bear the same ratio to twenty percent (20%) of such full maintenance charge as the number of full calendar months remaining in such calendar year bears to twelve (12)], unless and until a residential structure has been built thereon and three (3) months have elapsed since the earlier to occur of (a) the substantial completion of such residence, or (b) the actual occupancy of such residence. Thereafter, commencing on the first day of the next succeeding calendar month,

the full maintenance charge then assessed against any such Tract shall become applicable. If the annual maintenance charge on such Tract has been prepaid at twenty percent (20%) of the full maintenance charge then assessed (or such pro rata portion thereof as above provided) for the portion of the calendar year remaining after the full maintenance charge becomes applicable to such Tract, as herein provided, the then Owner of such Tract shall be obligated to pay to the Association, on the date all of the full maintenance charge becomes applicable, as herein provided, that pro rata portion of eighty percent (80%) of such full maintenance charge then assessed, which shall bear the same ratio to eighty percent (80%) of such full maintenance charge as the number of full calendar months remaining in such calendar year bears to twelve (12).

Section 4. Unimproved Tracts Owned by Owners Other Than Declarant. Each Owner (Other than Declarant) shall pay one hundred percent (100%) of any special assessment levied or imposed against each Tract owned by such Owner under the terms of Section 6 of this Article VI. Owners of unimproved Tracts other than Declarant shall pay fifty percent (50%) of the then existing full maintenance charge assessment for each Tract owned by them, until a residential structure has been completed thereon. Thereafter, commencing on the first day of the next succeeding calendar month, the full maintenance charge then assessed shall become applicable. If the annual maintenance charge on such Tract has been prepaid at fifty percent (50%) of the full maintenance charge then assessed for the portion of the calendar year remaining after the full maintenance charge becomes applicable, as herein provided, then the Owner of such Tract shall be obligated to pay to the Association, on the date the full maintenance charge becomes applicable, as herein provided, that pro rata portion of fifty percent (50%) of the full maintenance charge then assessed, which shall bear the same ratio to fifty percent (50%) of such full maintenance charge as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each such Owner to notify the Association at the time such residential structure has been completed.

Section 5. Commencement and Adjustment of the Annual Maintenance Charge. The annual maintenance charge provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Trustees to be the date of commencement. The first assessment of the annual maintenance charge shall be for the balance of the calendar year in which it is made and shall be payable on the day fixed for commencement, or in equal monthly, quarterly or semi-annual installments over the balance of the year, at the election of the Board of Trustees of the Association. The assessments of the annual maintenance charge for each calendar year after the first year shall be due and payable to the Association in advance on January 1st of each year, or in equal monthly, quarterly or semi-annual installments over such year, at the election of the Board of Trustees of the Association; provided, however, that upon the purchase of his Tract (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Owner shall be obligated to pay to the Association that pro rata part of the full maintenance charge assessed on such Tract which shall bear the same ratio to the full maintenance charge as the number of full calendar months remaining in the year of purchase bears to twelve (12), and which shall be payable in full upon such purchase or in equal monthly, quarterly or semi-annual installments over the balance of the year of purchase, as the Board of Trustees of the Association may elect.

The Board of Trustees of the Association may decrease or increase the amount of the annual maintenance charge provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the annual

maintenance charge shall become effective prior to the expiration of ninety (90) days after date of its adoption, and each Owner subject to such assessment, shall, within thirty (30) days after such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Trustees which fixes the rate (i.e., the amount of the annual maintenance charge per Tract) at which the annual maintenance charge will be assessed at an amount in excess of the sum of the maximum rate at which the annual maintenance charge could have been assessed (under the terms hereof) in the next previous year plus ten percent (10%) of such previous maximum rate, shall become effective unless and until such resolution is ratified either (i) by the written assent of the Members of the Association who in the aggregate then own at least fifty-one percent (51%) of the Tracts, if no meeting of the membership is held for ratification, or (ii) by the assent of fifty-one percent (51%) of the votes of the Members of the Association who are present and voting in person or by proxy at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the Members must be given prior to the effective date of the resolution of the Board of Trustees. No increase in the annual maintenance charge shall take effect retroactively.

If any resolution of the Board of Trustees which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount of the annual maintenance charge last in effect shall continue in effect until duly changed in accordance with the above provisions. The Board of Trustees may decrease the amount of the annual maintenance charge without ratification by or assent of the Members of the Association.

Section 6. Special Assessments. The Board of Trustees of the Association, from time to time by the adoption of a resolution for such purpose, subject to ratification by the Members of the Association as hereinafter provided, may levy and impose against each Tract, a special assessment for a specific amount, which shall be equal for each such Tract, which funds shall be used by the Association for purchasing equipment or facilities for any Common Properties or Common Facilities and/or defraying in whole or in part the cost of constructing new capital improvements or altering, remodeling, restoring or reconstructing previously existing capital improvements upon such Common Properties or Common Facilities, including fixtures and personal property related thereto; provided, however, that before any such resolution shall become effective it shall be ratified either (i) by the assent in writing of the Members of the Association who in the aggregate then own at least seventy-five percent (75%) of the Tracts, if no meeting of the membership is held for ratification, or (ii) by the assent of seventy-five percent (75%) of the votes of the Members who are present and voting in person or by proxy at a special meeting of the membership called for this purpose and at which a quorum is present. The Owner of each Tract shall pay his special assessment to the Association at such time or times and in such manner as provided in such resolution.

Section 7. Quorum for any Action Authorized Under Sections 5 or 6. The quorum required for any action authorized by Sections 5 or 6 hereof shall be as follows:

At the first meeting called, as provided in Sections 5 or 6 hereof, the presence at the meeting of Members, or of written proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be

one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 8. Duties of the Board of Trustees. The Board of Trustees of the Association shall fix the date of commencement and amount of each annual maintenance charge at least thirty (30) days in advance of such commencement date and shall, at that time, prepare a roster of the Tracts and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by Declarant and/or any Owner. Written notice of assessment shall thereupon be mailed to every Owner at the last address for such Owner reflected in the records of the Association. The Association shall, upon demand at any time, furnish to any Owner a certificate in writing signed by an officer of the Association, setting forth whether the assessment on such Owner's land has been paid and stating the amount of any delinquency. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Liens to Secure Assessments. The annual maintenance charge and the special assessments, as hereinabove provided for, shall each constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against each Tract and all improvements thereon, for the benefit of the Association and all Members. Subject to the conditions that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to

(a) all liens on the Tracts for taxes or special assessments levied by City, County, or State governments, or any political subdivision or special district thereof, and

(b) all liens on the Tracts securing amounts due or to become due under any term Contract of Sale dated, or any mortgage, vendor's lien or deed of trust filed for record, prior to the date the amount of any such charges or assessments become due and payable, and

(c) all liens including, but not limited to, vendor's liens, deeds of trust and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Tract when the same is purchased or for any part of the cost of constructing, repairing, adding to or remodeling the residence and appurtenances situated on any Tract.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing annual maintenance charges and special assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any tract from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay such annual maintenance charge which becomes due prior to such foreclosure, be extinguished by any foreclosure.

Section 10. Effect of Non-Payment of Assessment. If any annual maintenance charge or any special assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest interest

rate permitted by applicable law, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorney's fees, together with court costs, if any. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of such liens against his Tract. All such actions may be instituted and brought in the name of the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 11. Collection and Enforcement. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Tract, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of annual maintenance charges and special assessments and/or for the enforcement and foreclosure of the liens securing the same.

#### ARTICLE VII

##### Architectural Control Committee

Section 1. Approval of Plans. No building, structure, fence, wall, or other improvements shall be commenced, erected, constructed, placed or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, nor shall any lake, pond or other body of water be built upon the Properties or other material alteration of the physical character of any portion of the Properties (including, but not limited to, change of grade) be commenced or made, until the detailed plans and specifications therefor shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, location and situation on the Tract, possible affect on other portions of the Properties, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Tract lines), by the Committee constituted as provided herein. The submitted plans and specifications shall specify, in such form as the Committee may reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, location and height above ground of the proposed improvements or alterations thereto, and size and approximate depths of any lake or pond. In the event said Committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this Section will be deemed to have been fully complied with; provided, however, that the failure of the Committee to approve or disapprove such plans and specifications within such thirty (30) day period shall not operate to permit any structure or other alteration of the Tract to be commenced, erected, placed, constructed or maintained on any Tract in a manner inconsistent with any provision of this Declaration. Without limitation of the powers herein granted, the Committee shall have the right, in its sole discretion, to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration, or repair of any improvement on any Tract. It also shall have the right to specify requirements for each Tract as follows: minimum setbacks; maximum height above ground of buildings and other structures; the

location, height, and extent of fences, walls, or other screening devices, and the orientation of the structures with respect to access and major entry and frontage. The Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction or architectural design requirements or that might not be compatible, in the sole discretion of the Committee, with the design or overall character and aesthetics of the Properties.

Section 2. Committee Membership. The Committee shall be initially composed of Dean L. Fenton, Jim Neilson and Dennis Bailey, who may, by majority vote, designate or appoint a representative or representatives to act for them [the term "Committee" as used herein shall refer to the individuals named above, their assignee as permitted herein, or the Committee's designated representative(s)]. In the event of death, dissolution, or resignation of any member or members of the Committee, the remaining member or members (if any) shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full right, authority and power to carry out the functions of the Committee as provided herein, or to designate a representative with like right, authority and power. In the event all members of the Committee die, are dissolved, or resign so that there are then no existing members of the Committee, the duties, rights, powers, and authority of the Committee shall automatically transfer, without any further formality, to the Board of Trustees of the Association. In no event shall any member of the Committee have any liability for any error or judgment or action taken by such Committee or otherwise be responsible or accountable under any circumstances for any action or inaction of the Committee so long as such member is acting in good faith.

Section 3. Transfer of Authority to the Association. The duties, rights, powers and authority of the Committee constituted hereby may be assigned at any time, at the sole election of a majority of the members of the Committee, to the Board of Trustees of the Association, and from and after the date of such assignment, and the acceptance thereof by such Trustees, the Board of Trustees of the Association shall have full right, authority and power, and shall be obligated, to perform the functions of the Committee as provided herein, including the right to designate a representative or representatives to act for it.

Section 4. Variances. This Declaration contains a number of provisions wherein the Committee is expressly granted the authority, in its discretion, to permit, consent to or approve a variance from the specific requirements or effect of a particular covenant. The 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 variance 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 Committee shall approve such 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 Tract relative to which such variance has been requested, describing the applicable covenant(s) and the particular variance requested, expressing the decision of the Committee to permit the variance, describing (when applicable) the conditions (which may be affirmative and/or negative in nature) on which the variance has been approved (including, as examples but without limitation, the type of alternate materials to be permitted, the nature of the proposed use which has been approved, or the fence location approved) and signed by a majority of the then members of the Committee (or by the Committee's designated representative if one has been

designated under the authority contained in Section 2 above). 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 disapproval from the Committee, or (b) failure by the Committee to respond to the request for variance within thirty (30) days following its submission. In the event the Committee or any successor to the authority thereof then shall not be functioning, and the Board of Trustees of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the specific requirements or effects of the intentation of Declarant shall be permitted, it being the except in the discretion of the Committee or, if it shall have succeeded to the authority of the Committee in the manner provided herein, the Board of Trustees of the Association. The Committee shall have no authority to approve any such variance except in the instances provision for which is made expressly in this Declaration.

Section 5. Minimum Construction Standards. The Committee may from time to time promulgate an outline of minimum acceptable construction standards and specifications (including, without limitation, a limited number of acceptable exterior materials and/or finishes), which shall constitute guidelines only and shall not be binding upon the Committee or in any manner determinative of the approval or disapproval by the Committee of submitted plans and specifications.

ARTICLE VIII  
Building, Use and Construction  
Standards and Restrictions

Section 1. Permitted Land Use. Each Tract, together with all improvements thereon, shall be used and occupied for single family residential purposes only; provided, however, that in addition to such single family residence use, such Tract may be used for the limited agricultural and livestock activities and businesses described in Section 3 of this Article VIII. No Owner or other occupant shall use or occupy his Tract, or permit the same or any part thereof to be used or occupied, for any purposes other than private single family residential purposes for the Owner or his tenant and their families and domestic servants employed on the premises, or for the limited agricultural and livestock purposes described in Section 3 of this Article VIII. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Tracts for duplex apartments or dwellings, garage apartments or other apartment or multi-family uses, but shall not be deemed to prohibit the occupancy by one (1) family of two (2) separate residential structures on a Tract. No Tract shall be used or occupied for any business, commercial, trade or professional purpose, either apart from or in connection with the use thereof as a private residence, whether for profit or not, except as expressly permitted in Section 3 of this Article VIII.

Section 2. Building Restrictions. No building or other structure shall be built, placed, constructed, reconstructed or altered on any tract other than (a) a maximum of two (2) residential structures, with appurtenances incident to single family use, including, without limitation, with respect to any one such structure, bona fide servants' quarters or an enclosed, attached or detached garage or carport, and (b) structures customary in connection with, or the use of which is incidental to, the use of a Tract for the agricultural or livestock purposes permitted by Section 3 of this Article VIII, including, without limitation, barns and greenhouses. No residential structure or appurtenance shall be used or occupied until the exterior construction thereof is completed.



**Section 3. Permitted Agricultural and Livestock Uses.** In addition to use for single family residential purposes as provided in Section 1 of this Article, each Tract may be used for the following purposes:

(a) **Agricultural Use.** Subject to the limitations contained in this subsection (a), each Tract may be used, in addition to other permitted uses, for the purpose of producing from such Tract agricultural products such as vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds in accordance with generally accepted agricultural practices, provided that such agricultural uses and activities do not constitute a nuisance (as defined and used in Section 13 of this Article VIII). Such agricultural products may be sold or marketed to the public, provided, however, that, except as hereinafter expressly provided, no such sales or marketing shall be conducted on any Tract or any other portion of the Properties. The preceding sentence shall be deemed to prohibit specifically, but without limitation, the placing of a sign or signs on any portion of an Owner's Tract or on any portion of the Properties advertising or related to the marketing, sales, price or availability of such agricultural products; the construction or maintenance of any structure on a Tract or any portion of the Properties the primary purpose of which is for the public display of any such agricultural products; and the conducting on a Tract or any portion of the Properties of any form of public sale or auction of such agricultural products. However, nothing contained herein shall prohibit a third person or persons from entering upon a Tract for the purposes of viewing or inspecting agricultural products or unharvested or growing crops, purchasing same by private purchase and/or carrying or transporting agricultural products off such Tract. In connection with agricultural uses permitted in this subsection, an Owner may, when reasonable and necessary for the particular agricultural use, and when conducted in accordance with generally accepted agricultural practices, use tractors and other farm equipment, farm laborers and chemical fertilizers, pesticides and herbicides; provided, however, that an Owner must comply with all applicable rules, laws and regulations as to the type and manner of application of any chemical fertilizer, pesticide or herbicide. Notwithstanding the foregoing, the Committee shall have the right to prohibit the uses and activities on a Tract (including, without limitation, type and manner of application of chemical fertilizers, pesticides and herbicides) which it deems unreasonable or unnecessary for a particular permitted agricultural use or not conducted in accordance with generally accepted agricultural practices.

(b) **Livestock.** Subject to the limitations contained in this subsection (b), each Tract may be used, in addition to other permitted uses, for the purpose of raising and breeding the hereinafter named domestic livestock and animals. Only the following livestock and animals, and in the following numbers, may be kept, raised or bred upon any Tract [for purposes of determining the number of animals permitted to be kept on a Tract pursuant to this subsection (b), a Tract shall be deemed to consist of the number of full acres shown for such Tract on the Subdivision Plat, rounded, if necessary, to the next lowest full acre]:

**Group A:** horses, cattle, sheep,  
goats--

no more than two (2) Group  
A animals per each acre

**Group B:** rabbits, ducks,  
turkeys, chickens, pheasants,  
pigeons, and other varieties  
of birds--

no more than eight (8) of

any one type of Group B animal per each acre and no more than an aggregate of twenty (20) Group B animals per each acre

Group C: dogs, cats--

no more than an aggregate of one (1) dog and one (1) cat per each acre and an aggregate limit of no more than five (5) Group C animals on any single Tract or on any two or more Tracts combined by an Owner pursuant to Section 24 of this Article VIII

Group D: fish, bees--

no limit

provided, however, that an Owner may keep, raise and/or breed such other domestic livestock and animals (not expressly prohibited herein) which may from time to time be approved in advance by the Committee in writing, in such numbers and subject to such other restrictions as the Committee may designate at the time of such approval. The offspring of Group A animals permitted hereby to be kept on a Tract may be kept by an Owner on his Tract for up to one (1) year (or such shorter or longer period of time as the Committee may determine for a specific type of animal in its sole discretion) before such offspring will become subject to the limitations contained in this subsection (b). The offspring of Group B and Group C animals permitted hereby to be kept on a Tract may be kept by an Owner on his Tract for up to six (6) months (or such shorter or longer period of time as the Committee may determine for a specific type of animal in its sole discretion) before such offspring will become subject to the limitations contained in this subsection (b). In no event shall any Owner keep, raise or breed, or allow to be kept, raised or bred on his Tract, any pigs, swine, snakes or other reptiles, or any other animal which, in the judgment of the Committee, would be deemed exotic, non-domestic or wild (ferae naturae).

Permitted livestock and other animals and their offspring may be sold or marketed to the public, provided, however, that, except as hereinafter expressly provided, such sales and marketing shall not be conducted on any Tract or any other portion of the Properties. The preceding sentence shall be deemed to prohibit specifically, but without limitation, the placing of a sign or signs on any portion of such Owner's tract or on any portion of the Properties advertising or related to the marketing, sales, price or availability of such livestock and other animals and their offspring; the construction or maintenance of any structure on a Tract or any portion of the Properties the primary purpose of which is for the public display of any such livestock and other animals and their offspring; and the conducting on such Owner's Tract or on any portion of the Properties of any form of public sale or auction of such livestock and other animals and their offspring. However, nothing contained herein shall prohibit a third person or persons from entering upon a Tract for the purposes of viewing or inspecting any such livestock or other animals or their offspring, purchasing same by private purchase and/or carrying or transporting same off such Tract.

In the exercise of the rights granted in this subsection, an Owner shall comply with general accepted livestock raising and breeding practices. The Committee shall have the right to prohibit any use or activity on a Tract which it deems unreasonable for the keeping, raising or breeding of livestock and other animals otherwise permitted under this subsection (b), or

any such use or activity which in its opinion constitutes a nuisance (as such term is defined and used in Section 13 of this Article VIII).

Section 4. Construction Requirements.

(a) Only new construction materials (except for used brick) shall be used and utilized in constructing any structures situated on a Tract, unless the Committee shall expressly approve in writing the proposed use of used construction materials. Each residence shall be constructed of materials (including, without limitation, exterior materials) which have been approved by the Committee pursuant to the authority granted to it in Section 1 of Article VII.

(b) Modular, manufactured or prefabricated residential structures are expressly permitted, provided they are constructed on a permanent foundation and satisfy the other requirements of this Section 4; except that single wide units are expressly prohibited and in no event shall any modular, manufactured, or prefabricated residential structure be less than sixteen feet (16') in width.

(c) The roof on any residential structure on a Tract (including modular, manufactured or prefabricated structures) shall have a minimum pitch of three and one half inches (3 1/2") vertical per twelve inches (12") horizontal, and an overhang of at least twelve inches (12").

(d) All exterior construction of a residential structure, garage, porches and any other appurtenances or appendages of every kind and character on a Tract, and all interior construction (including, but not limited to, all electrical outlets in place and functional, all cabinet work completed, all interior walls, ceilings and doors completed and covered by paint, wallpaper, paneling or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

Section 5. Size of Residences. Except with the prior written approval of the Committee, no residential structure (including prefabricated, manufactured and modular structures) with an exterior area of less than eight hundred (800) square feet, exclusive of the area of attached garages, porches, servant's quarters or other appurtenances or appendages, shall be constructed on any Tract.

Section 6. Building Location. No structure shall be located on any Tract between the street or streets abutting such Tract and the building set back lines shown on and provided for in the Subdivision Plat. Additionally, except as may otherwise be indicated on the Subdivision Plat, no structure shall be located nearer than fifty feet (50') to a rear boundary line or forty feet (40') to a side boundary line; and, except as may otherwise be indicated on the Subdivision Plat, with regard to lots 12 through 28 as shown on the Subdivision Plat, no structure shall be located nearer than forty feet (40') to any side or rear boundary line. Unless otherwise approved in writing by the Committee, each residential structure shall face the front boundary line of the Tract on which it is located. For purposes hereof, the front boundary line of a Tract shall be the boundary line abutting a street; provided, that if a Tract shall have more than one boundary line abutting a street, the front boundary line of such Tract shall be that boundary line having the widest set back line as shown on the Subdivision Plat. Nothing contained herein shall permit any structure or improvement situated on any Tract to encroach on another Tract or any portion of the Common Properties or to extend beyond the applicable set back lines shown on the Subdivision Plat or provided for herein.

Section 7. Temporary and Other Structures. No structure of a temporary character, trailer, mobile home, tent, shack, barn or any other structure or building, other than (a) the residence(s) permitted hereby to be built thereon, and appurtenant structures including, without limitation, garage and servants' quarters, and (b) barns, greenhouses, sheds or other structures reasonably related to and necessary for an agricultural or livestock use permitted herein, shall be placed or constructed on any Tract, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities (permanent or temporary) in and upon the Properties as Declarant, in its sole discretion, may deem necessary or convenient during the period of and in connection with the sale of the Tracts, construction and sales of residences and constructing other improvements upon the Properties. Such facilities may include, but not necessarily be limited to, a temporary office building or buildings, storage area, signs, temporary toilet facilities and sales office. Declarant shall also have the right to use a residence situated on a Tract as a temporary office or model home during the period of and in connection with construction and sales operations in the Properties. No mobile home shall be stored, parked or kept on any Tract at any time. No on-street parking of any vehicle of any type shall be permitted at any time. No truck, trailer, automobile, camper, motor home or other vehicle or any structure other than a single family residence or servants' quarters constructed in accordance with the provisions hereof may be used as a residence or for other occupancy purposes unless such use is temporary and is approved in advance in writing by the Committee.

Nothing herein contained shall prohibit the construction on a Tract as a residence of a modular, manufactured or prefabricated home, provided such modular, manufactured or prefabricated home is built upon a permanent foundation approved by the Committee pursuant to its authority contained in Section 1 of Article VII hereof, satisfies all other building and construction requirements contained in this Article VIII and is not a "mobile home", as such term is hereinafter defined. For purposes hereof, a structure shall be deemed a "mobile home" if it is a form of premanufactured housing and has attached wheels, tongue for trailering or an axle. Whether or not a structure constitutes a mobile home shall be determined by the Committee in its sole discretion.

Section 8. Fences, Walls, Hedges. Declarant may (but shall not be obligated to) construct, prior to the sale of a Tract, fencing of the type selected by Declarant along the side and rear boundary lines of such Tract, which fencing, if any, shall be common fencing and serve as boundary fencing for adjacent Tracts. The Owners of adjoining Tracts shall have the shared duty at their cost to maintain any such boundary fencing constructed by Declarant along the common boundary line of such Owners' Tracts and to keep any such fencing in a good state of repair at all times (including replacing same if necessary). Such Owners may replace or alter any such fencing at their cost with such other type of fencing or in such manner as such Owners may desire, provided both such Owners have agreed to such replacement or alteration and, provided further, that such Owners shall have obtained the prior written consent of the Committee to such proposed replacement or alteration of any such fencing and to the type of fencing proposed to be installed by such Owners (if applicable). The above described maintenance obligations of such Owners shall apply also to any replacement fencing constructed by such Owners in accordance with the foregoing provisions. Any such fencing erected by Declarant along the boundary lines of the Tracts, as same may be altered by the Owners as above provided, may not be removed by any Owner without the replacement of same as above provided, and title to same shall pass with title to the Tracts.

With the prior written approval of the Committee as to location and type of fencing, an Owner may, at his sole cost and expense, construct fencing along the front, side and/or rear boundary line(s) of his Tract. Such Owner may thereafter, with the prior written approval of the Committee, replace, modify and rebuild such fencing in such manner as such Owner may desire. Such Owner shall, at his sole cost and expense, maintain such fencing and keep same in a good state of repair at all times (including replacing same if necessary).

Each Owner of a Tract must construct on his Tract such front property line and interior fencing as is necessary to confine and restrain such livestock or other animals which such Owner may maintain on his Tract as permitted by the further terms of this Declaration, which fencing shall be sufficient to prevent such animals from wandering or entering upon or damaging the Tract of another Owner or any Common Properties or Common Facilities. Such Owner shall obtain the prior written approval of the Committee as to the type and location of such fencing and any subsequent modification or replacement of same. Such Owner shall, at his sole cost and expense, maintain such front property line and interior fencing and keep same in a good state of repair at all times (including replacing same if necessary), and in sufficient condition to accomplish the aforesaid purposes of such fencing.

Further, the Committee shall have the right and authority to require the construction and/or installation on a Tract by the Owner of such Tract of such other fencing or screening devices as it shall reasonably determine to be appropriate to maintain the beauty and aesthetics of the Properties. Ownership of any wall, fence or hedge erected as screening on a Tract by Declarant (and the right to erect any such wall, fence or hedge for such purpose is hereby reserved in favor of Declarant, its successors and assigns), or by an Owner as required by the Committee as provided herein, shall pass with title to such Tract and the Owner of such Tract shall have the duty, at its sole cost and expense, to maintain and keep same in a good state of repair at all times (including replacing same as necessary).

Each Owner shall have the right to construct or install on his Tract such other fencing, walls or similar structures as may be approved by the Committee pursuant to its authority granted in Section 1 of Article VII.

Section 9. Animals and Birds. Except as permitted pursuant to Section 3 of this Article VIII, no animals or birds of any kind shall be kept on any portion of the Properties.

Section 10. Garbage and Refuse Disposal. All Tracts and the Common Properties shall at all times be kept in a healthful, sanitary and attractive condition. No Tract or any part of the Common Properties shall be used or maintained as a dumping or burying ground for garbage, trash, junk or other waste matter. All trash, garbage and waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tightly-fitting lids, which shall be maintained in a clean and sanitary condition and screened from public view. No open burning of trash, garbage, debris or other materials shall be conducted on any portion of the Properties; provided, however, that an Owner may burn such materials in an enclosed incineration device which has been approved in advance in writing by the Committee. Any such incineration device shall be kept in a clean and sanitary condition by such Owner. Further, the Committee shall have the right from time to time to establish such other rules and regulations relating to storage, handling, removal and disposition of trash, garbage, junk debris and other wastes (including paper) as it, in its sole discretion, shall determine,

including, without limitation, obligating Owners to dispose of such materials through public authority or private garbage disposal service.

Section 11. Outside Storage; Antennae. Except at the locations, to the extent and in the manner approved in writing by the Committee, no Owner of any Tract shall have any right to keep articles, goods, materials, incinerators, trash bins, storage tanks or like equipment in a manner or location which is open or exposed to public view or to a view from adjacent Tracts. If it shall be necessary to store or keep such materials or equipment in the open, these shall be screened from view in a manner approved in writing by the Committee. Notwithstanding the foregoing, new building materials used in the construction of improvements on a Tract may be placed upon such Tract at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of such improvements, at which time such materials shall either be removed from such Tract or stored in an enclosure on such Tract which complies with the other pertinent requirements of this Declaration.

An Owner shall have the right to erect and install on his Tract such antennae or other electronic signal receiving devices or structures as such Owner may desire, whether free standing (with or without down guys) or attached to the residential structure on such Tract; provided, however, that such antennae or other electronic signal receiving devices or structures may not be erected or installed on the portion of such Tract between the residential structure located thereon and the street(s) abutting such Tract.

Section 12. Signs. No signs, billboards, posters or advertising devices of any character shall be erected, permitted or maintained on any Tract except, with regard to each Tract, one (1) sign of not more than five (5) square feet advertising such Tract for sale or rent; provided, however, that Declarant reserves the right to construct and maintain such signs, billboards or advertising devices on the Properties as is customary in connection with the sales, advertisement and marketing of the Tracts and the Properties. The Committee, or its agents, shall have the right to remove from any portion of the Properties any sign, billboard, poster or other advertising device that does not comply with the provisions of this Section 12 and, in so doing, shall not be subject to any liability for trespass, injury to or conversion of property, or have any liability of any kind or character, as a result of or arising out of such removal by the Committee or its agents, except for damages caused by the wilful misconduct or gross negligence of the Committee or its agents.

Section 13. Nuisances or Illegal Activities. No illegal, noxious or offensive activity of any kind shall be conducted on any portion of the Properties, and the Committee shall have the exclusive discretion, to be exercised in a reasonable manner, to determine what activity constitutes a noxious or offensive activity. Without limiting the generality of the preceding sentence, no use shall be permitted which is offensive by reason of odor, fumes, vibrations, dust, smoke, radiation, noise or pollution, or that is hazardous by reason of excessive danger of fire or explosion or which does (or is deemed by the Committee in the reasonable exercise of its discretion to be likely to) cause or produce a nuisance as to any other portion of the Properties. No hunting or discharge of firearms shall be permitted on any portion of the Properties; provided, however, that hunting with shotguns or other discharge of shotguns in a safe and lawful manner (and at a safe distance from the Tracts of other Owners and from all other portions of the Properties) shall be permitted on such Tracts as are owned by an Owner which are contiguous and together constitute

an area of at least twenty-five (25) acres. Motorcycles shall not be operated on any portion of the Properties if by reason of noise or manner of use they are considered offensive (as evidenced by written complaint to the Committee) by other Owners. Drying of clothes in public view is prohibited, except on lines erected for such purpose behind a residence situated on a Tract; and, if necessary, an Owner shall construct and maintain a drying yard or other suitable enclosure to screen such drying of clothes from public view.

Section 14. Mail Delivery. The Committee shall have the right to approve the type, design and location of installation of any mail delivery boxes or mail deposit receptacles placed on any portion of the Properties.

Section 15. Propane, Butane or LP Gas. The installation, use and storage of any propane, butane, LP Gas or other gas, and any gas tank, bottle or cylinder of any type, shall require the prior written consent of the Committee as to the manner and means of such installation, use and storage. Any control boxes, valves, connections or refilling or refueling devices shall be completely landscaped with shrubbery so as to obscure their visibility from any street, other Tract or the Common Properties.

Section 16. Driveways and Culverts. Prior to the sale of each Tract, the Declarant may (but shall not be obligated to) construct, with regard to such Tract, a culvert and bridge over any drainage ditch along the front property line of such Tract, so as to provide access over such drainage ditch to such Tract, so the street abutting the front property line of such Tract from Owner may alter any such culvert or bridge, or construct any culvert or bridge, without the prior written consent of the Committee and any required consent of any governmental body or agency. No Owner may block any drainage ditch (including road ditches). Driveways on a Tract shall not at any point be closer than ten feet (10') to any property line of such Tract, except as necessary to provide access across the front property line to the street. No driveways or roadways may be constructed on any Tract to provide access to any adjoining Tract (unless such Tracts are combined pursuant to Section 24 of this Article VIII) or other portion of the Properties without the prior written consent of the Committee.

Section 17. Drainage. Neither Declarant, the Committee nor the Association, nor any of their respective successors or assigns, shall be liable for any loss of use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, sidewalks, driveways or buildings or structures of any type or the contents thereof on any Tract caused by any water levels, rising waters or drainage waters.

No Owner shall interfere with or alter in any way the established drainage over his Tract or any portion of the Properties unless and until the detailed plans and specifications therefor shall have been submitted to and approved in writing by the Committee.

Section 18. Drilling and Mining Operations. No Owner, or anyone claiming under such Owner shall conduct any oil drilling or development operations, oil refining, quarrying or mining operations of any kind upon or in any Tract, nor shall such Owner, or anyone claiming under such Owner, construct upon such Tract any oil wells, tanks, tunnels, mineral excavations or shafts, or oil derricks or other structure designed for use in boring for oil, natural gas or other minerals. Nothing contained in this Section 18 shall prohibit or restrict the right of an Owner to drill for water on a Tract pursuant to Section 22 of this Article VIII.

Section 19. Removal of Dirt. The digging of dirt or the removal of any dirt from any Tract or any portion of the Common Properties is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 20. Maintenance of Tracts and Improvements. Each Owner shall have the responsibility, both prior and subsequent to the construction of improvements thereon, of keeping his Tract and buildings, improvements, appurtenances and landscaping thereon in a well maintained, safe, clean and attractive condition at all times (including, without limitation, cutting or trimming grass, weeds and any other ground cover).

Section 21. Septic Systems. No septic tank, grease trap, field lines or other home waste water disposal system shall be installed on any Tract without the prior written approval of the Committee of the plans therefor. Such plans shall indicate the type and location of placement of such tank or system, in such detail as the Committee may reasonably require. Such septic tank, grease trap, field line or other waste water disposal system shall meet all applicable governmental requirements. However, the Committee shall have the right to require the Owner of a Tract to install such septic tank, grease trap, field lines or other waste water disposal system in accordance with specifications designated by the Committee, which specifications shall meet all pertinent requirements of governmental authorities having jurisdiction.

No outside toilets shall be permitted on any Tract. No installation of any kind for disposal of sewage shall be allowed which results or would result in raw or improperly treated sewage being discharged therefrom. No discharge from sewage facilities, treated or untreated, shall be emptied or drained into streets, ditches, lakes or onto the surface of any portion of the Properties.

Section 22. Water Wells. There is presently no water system available to the Subdivision. Until such time as water service by means of a central water system is available to a Tract, the only permissible source of water for such Tract shall be a water well or wells drilled in accordance with the terms of this Section 22. Each Owner may therefore, subject to the terms hereof, on his own Tract drill for and provide his own water supply, or join with other Owners to drill a common water well. If several Owners shall drill a common well, such Owners may, with the prior written consent of the Committee and any utility company or other entity having the right to use easements on the Properties, use the easements herein reserved to install service water lines from such common well. All water wells must comply with all requirements of governmental authorities having jurisdiction. Further, no water well may be drilled without the prior written consent of the Committee as to the type of water well and location and manner of drilling of same. Except for water wells drilled in accordance with the terms of this Section (and except for a central water service, when available), no other source of water may be utilized to provide water to a Tract, including, without limitation, transportation of water to such Tract by truck or other manner and storage of water on such Tract in a cistern or other water storage structure. If a central water service system shall become available to a Tract, the Owner of such Tract shall have the option to either connect to such central water system or utilize a water well drilled in accordance with the terms of this Section; provided, however, if any applicable law or regulation requires such Owner to connect to such central water system, such Owner shall comply with such law or regulation.

Section 23. No Subdivision of Tracts. No Tract shall be subdivided in any manner without the prior written consent of the Board of Trustees of the Association.



Section 24. Combining Tracts. Any Owner of two or more adjoining Tracts may, without the prior written consent of the Board of Trustees of the Association, consolidate such Tracts into a single building location for the purpose of constructing a maximum of two (2) residential structures and other improvements as permitted by the terms hereof. If adjoining Tracts are consolidated by an Owner, the building set back lines along the common boundary line(s) of such Tracts shall be relaxed until such time (if any) when the Tracts are restored to their original configuration. Any required abandonment or relocation of easements affecting such Tracts shall require the prior written approval of the Board of Trustees of the Association and of any utility company having the right to the use of any such easement. Tracts consolidated by an Owner under this Section 24 may be sold by such Owner as consolidated, but if such Tracts are to be sold as originally configured, such Tracts must be restored to their original configuration and brought into compliance with all requirements of this Declaration (including, without limitation, building set back requirements) prior to any sale thereof.

Section 25. Right of the Association to Perform Work. In the event of default on the part of the Owner in observing any of the requirements set out in Sections 1 through 24 of this Article VIII, the Association, acting through its Board of Trustees, shall have the right (but not the obligation) to enter upon such Owner's Tract through its agents, without liability to such Owner (or any tenant, invitee, customer, or licensee of Owner) to trespass or otherwise, and cause to be done any work or any other act necessary to secure compliance with these Protective Covenants set out in Sections 1 through 24 of this Article VIII, and may charge such Owner for the cost of any such work or act. As a condition precedent to exercising the rights given to the Association under this Section 25, the Association shall give the Owner written notice specifying with particularity the nature of the work or act which the Association considers necessary and such Owner shall have a period of fifteen (15) days after receipt of such written notice within which to commence such work or act. If such Owner timely commences such work or act and prosecutes same with due diligence until completion, the Association shall not have any right to enter upon such Owner's Tract for purposes of performing the same. The cost of any such work or act performed by the Association (herein called the "Section 25 assessments") shall be assessed against all Tracts in the Subdivision owned by such Owner, as provided below. Each Owner shall be deemed to have agreed to pay any Section 25 assessment for which he is obligated under the terms hereof, promptly upon receipt of a statement therefor, and that upon failure to make prompt payment thereof, the amount due for such work or act may be added to the annual maintenance charge herein established to which such Owner's Tract is subject as an addition to such annual maintenance charge, and the provisions of Sections 10 and 11 of Article VI also shall be applicable to any such Section 25 assessment which has been added to an Owner's annual maintenance charge.

Any amounts due and payable by an Owner to the Association under the terms of this Section 25 shall constitute and be secured by a separate and valid and subsisting lien, hereby created and fixed, and which shall exist upon and against all Tracts owned by such Owner and all improvements thereon, for the benefit of the Association and all Members. Subject to the conditions that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to

(a) all liens on such Tracts for taxes or special assessments levied by the City, County and State governments, or any political subdivision or special district thereof, and

(b) all liens on such Tracts securing amounts due or to become due under any term Contract of Sale dated, or any mortgage, vendor's lien or deed of trust filed for record, prior to the date the amount of such assessment became due and payable, and

(c) all liens including, but not limited to, vendor's liens, deeds of trust and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Tract when the same is purchased or for any part of the cost of constructing, repairing, adding to or remodeling the residence and appurtenances situated on any such Tract.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing Section 25 assessments which became due and payable prior to such foreclosure date, but no such foreclosure shall free any tract from the liens securing Section 25 assessments thereafter becoming due and payable, nor shall the liability of any Owner to pay such amount which becomes due prior to such foreclosure, be extinguished by any foreclosure.

#### ARTICLE IX

##### General Provisions

Section 1. Duration. The Protective Covenants of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to the Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending thirty (30) years after such term, the Protective Covenants of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all Tracts in the Subdivision and properly recorded in the appropriate records of San Jacinto County, Texas. After the first two (2) years of such initial term, the Protective Covenants of this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than seventy-five percent (75%) of all Tracts in the Subdivision and properly recorded in the appropriate records of San Jacinto County, Texas. Upon the expiration of such initial term, all of the covenants and restrictions of this Declaration (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) year extension periods, the covenants and restrictions contained in this Declaration may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all the Tracts in the Subdivision and properly recorded in the appropriate records of San Jacinto County, Texas.

Section 2. Enforcement. The Association, as a common expense to be paid out of the Maintenance Fund, or any Owner, at his own expense, shall have the right to enforce, by proceedings at law or in equity, (i) all restrictions, covenants, conditions, reservations, liens, charges, assessments and all other provisions set out in the Declaration or any Supplemental Declaration; and (ii) unless specifically provided to the contrary therein, all restrictions, covenants, conditions, reservations, liens, charges, assessments and other provisions set out in any deed or other

instrument executed by Declarant further restricting the use or development of the Properties or any portion thereof; provided, however, failure of the Association or any Owner to take any action upon a breach of any of the foregoing shall not render such party liable in any manner for such failure. Failure of the Association or any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

Section 3. Amendments by Declarant. The Declarant shall have the right at any time and from time to time, without the joinder or consent of any party, to effect an amendment to this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of (a) correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, or (b) to delete or modify any covenant, restriction, condition or provision hereof or to add thereto any additional covenant, restriction, condition or provision, if such deletion, modification or addition shall be required by any governmental body (or agency or political subdivision thereof) or by any other supplier of public utilities to the Subdivision, as a condition precedent to its agreement to supply public utilities to any portion of the Subdivision; provided that any such amendment shall be consistent with and in furtherance of the general plan of development of the Subdivision as evidenced by the Declaration and all Supplemental Declarations and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 4. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible of more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of the Declaration and all Supplemental Declarations shall govern.

Section 5. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 6. Notices. Any notice required or desired to be given under this Declaration shall be in writing and shall be deemed to have been properly served and given (i) when delivered in person and receipted for or (ii) four (4) days after deposit of same in the United States Mail, certified, return receipt requested, postage prepaid, addressed, if to an Owner or Member, to its last known address as shown on the records of the Committee or the Association, as the case may be, at the time of such mailing, or, if to the Association, to its President, Secretary or registered agent. The initial address for the Association and the Committee shall be:

10503 Ivy Oaks Lane  
Houston, Texas 77041

with copies to:

Dean L. Fenton  
P. O. Box 20147  
Houston, Texas 77225

Jim Neilson  
Route 1, Box 45  
Shepherd, Texas 77371

