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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WESTMORELAND HEIGHTS**

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BY: _____

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EXHIBITS:

- Exhibit "A" - Property Subject to Declaration
- Exhibit "B" - Bylaws of Westmoreland Estates Homeowners Association, Inc.
- Exhibit "C" - Articles of Incorporation of Westmoreland Estates Homeowners Association, Inc.

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WESTMORELAND HEIGHTS**

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

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WESTMORELAND HEIGHTS (this "Declaration") is made on the date hereinafter set forth by WESTMORELAND HEIGHTS LP, a Texas limited partnership (hereinafter sometimes called "Declarant").

WITNESSETH:

WHEREAS, the Declarant desires to impose on the real property described in Exhibit "A", to this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of the present and future owners of each portion of such real property, and to establish flexible and reasonable procedures for the overall development, administration, maintenance and preservation of such property.

NOW, THEREFORE, Declarant hereby declares that from and after the recording of this instrument in the Deed Records of Dallas County, Texas, the real property described in Exhibit "A", to this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the following covenants, conditions, restrictions, easements, assessments and liens, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, such real property. This Declaration shall be binding on and shall inure to the benefit of all persons having any right, title or interest in all or any portion of such real property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

**ARTICLE I
DEFINITIONS**

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

1.1 "Articles" - The Articles of Incorporation of Westmoreland Estates Homeowners Association, Inc., as filed in the Office of the Secretary of State of the State of Texas, Austin, Texas, attached to this Declaration as Exhibit "C" and incorporated by this reference, as they may be amended from time to time.

1.2 "Association" - Westmoreland Estates Homeowners Association, Inc., a Texas non-profit corporation, its successors and/or assigns.

1.3 "Board of Directors" or "Board" - The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

1.4 "Builder" - Any Person which purchases one or more Lots within the Community for the purpose of constructing improvements thereon for later sale to consumers or purchasers of parcels of land within the Community for further subdivision, development and/or resale in the ordinary course of such Person's business and may include the Declarant.

1.5 "Bylaws" - The Bylaws of Westmoreland Heights Homeowners Association, Inc. attached to this Declaration as Exhibit "B" and incorporated by this reference, as they may be amended from time to time.

1.6 "Class 'B' Control Period" - The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section A.2 of the Bylaws.

1.7 "City" - The City of Desoto, Texas.

1.8 "Common Property" - Any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.9 "Community" - That certain real property described in Exhibit "A", save and except Lot 1, Block F of Westmoreland Heights, to this Declaration.

1.10 "Community-Wide Standard" - The standard of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standard may be more specifically determined by the Board and the Architectural Review Committee.

1.11 "County" - The County of Dallas, Texas.

1.12 "Declarant" - Westmoreland Heights LP, a Texas limited partnership and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire such interest for the purpose of development or sale of all or any portion of the remaining undeveloped or unsold portions of the Community and is designated as the "Declarant" hereunder in a recorded

instrument executed by the immediately-preceding "Declarant". Upon designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that there shall be only one "Declarant" hereunder at any given time.

1.13 "Eligible Mortgage Holder" - Those holders of First Mortgages secured by Lots in the Community who have requested notice of certain items as set forth in this Declaration.

1.14 "First Mortgage" - Any Mortgage that is not subject to any lien or encumbrance except the taxes or other liens that are given priority by statute or agreement.

1.15 "First Mortgagee" - The beneficiary or holder of a First Mortgage.

1.16 "Lot" - Any plot of land within the Community, other than the Common Property, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site as shown on a plat recorded in the land records of the County. Where the context indicates or requires, the term Lot includes any structure on the Lot.

1.17 "Member" - A person entitled to membership in the Association, as provided in Section 2.2.

1.18 "Mortgage" - Any mortgage, security deed, deed of trust and any and all other similar instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

1.19 "Mortgagee" or "Mortgage Holder" - The holder of a Mortgage.

1.20 "Mortgagor" - Any Person who gives a Mortgage.

1.21 "Occupant" - Any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.22 "Owner" - The record owner(s) of the fee simple title to or an undivided fee interest in any Lot, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.23 "Person" - Any natural person, as well as a corporation, joint venture, partnership (general or limited), association, limited liability company, or other legal entity.

1.24 "Residence" - A residential dwelling structure constructed on a Lot and which is intended to be used and occupied as a residence for a single family.

ARTICLE II
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

2.1 Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Property. The Association shall be responsible for enforcement of this Declaration and such reasonable rules regulating use of the Lots and Common Property as the Board may adopt. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines (as defined in Section 7.3 hereof). The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and Texas law.

2.2 Membership. Each Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 2.3 hereof and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Members' spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

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

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

Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 2.2 of this Article; there shall be only one vote per Lot. In any situation where a Member is entitled personally to exercise the vote for his Lot and there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The Class "B" Member is entitled to three (3) votes for each Lot in which it holds the interest required for membership under Section 2.2 of this Article. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration and the Bylaws, are specified elsewhere in the Declaration and the Bylaws. The Class "B" Member may

appoint a majority of the members of the Board of Directors during the Class "B" Control Period as specified in Article III, Section A.2 of the Bylaws.

The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of (i) two (2) years after expiration of the Class "B" Control Period pursuant to Article III of the Bylaws; or (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

2.4 Irrevocable Proxy. Each Member, by acceptance of a deed to any Lot, constitutes and appoints the Declarant as its duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval of the exercise of all rights and powers of the Declarant set forth in this Declaration and in the Bylaws, including the right to select the members of the Board of Directors until the first to occur of the events specified in Article III, Section 6 of the Bylaws. This proxy is coupled with an interest and is irrevocable.

ARTICLE III **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

3.1 Common Property. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Property and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas), and shall keep it in good, clean, attractive and sanitary order and repair, consistent with this Declaration and the Community-Wide Standard.

3.2 Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the Community, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as Common Property by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed. Declarant shall not be required to make any improvements whatsoever to the property to be conveyed and accepted pursuant to this Section.

3.3 Rules. The Association, through its Board, may make and enforce reasonable rules governing the use of the Lots and Common Property. Such rules shall be binding upon all Owners, Occupants, invitees and licensees until and unless repealed or modified in a regular or special meeting by two-thirds (2/3) of the Class "A" votes in the Association and by the Class "B" Member, so long as such membership exists.

3.4 Enforcement. The Association, through its Board, may impose sanctions for violations of this Declaration, the Bylaws or rules in accordance with procedures adopted by the Board, including reasonable monetary fines and suspensions of the right to vote and to use recreational facilities, if any, within the Common Property. In addition, the Association may exercise self-help to cure violations (including, without limitation, the towing of vehicles and the

removal of personal property); and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall also be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board on behalf of the Association, or, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

3.5 Occupants Bound. Each Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws and the rules and regulations of the Association, and shall be responsible for all violations and all losses or damages resulting from violations by such Occupants. In the event that an Occupant violates the Declaration, Bylaws or a rule or regulation for which a fine is imposed, such fine shall be assessed against the Owner. Unpaid fines shall constitute a lien against the Lot.

Any violation of the Declaration, Bylaws or rules and regulations by a lessee or any person living with the lessee is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Texas law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws and the rules and regulations of the Association, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner.

In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be assessed as a specific assessment against the Lot and the Owner.

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

3.7 Indemnification. The Association shall indemnify every officer, director and committee member against all expenses, including legal fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the current Board) to which he or she may be a party by reason of being or having been an officer, director or committee member.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to

any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

3.8 Dedication of Common Property. The Association may dedicate portions of the Common Property to the County or to any other local, state or federal governmental entity, subject to such approval as may be required by such entity and by Section 11.2 of this Declaration.

3.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the security of the Community. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE COMMUNITY, NOR SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE COMMUNITY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES AND DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY WITHIN THE COMMUNITY ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF RESIDENCES ON LOTS RESULTING FROM ACTS OF THIRD PARTIES.

3.10 Construction Activities. All Owners are hereby placed on notice that Declarant, any affiliate of Declarant and/or its agents, contractors, subcontractors, licensees and other designees, successors or assignees, may be, from time to time, conducting excavation, construction and other activities within or in proximity to the Community. By the acceptance of a deed or other conveyance or Mortgage, leasehold, license, easement or other interest, and by using any portion of the Community, each Owner automatically acknowledges, stipulates and agrees (a) that none of the aforesaid activities shall be deemed nuisances or noxious or offensive activities, under any applicable covenants or at law generally, (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is trespass or otherwise) any property within or in proximity to any portion of the Community where such activities are being conducted (even if not being actively conducted at the time of entry, such as at

night or otherwise during non-working hours), (c) Declarant, any affiliate of Declarant and all of their agents, contractors, subcontractors, licensees and other designees, successors and assignees, shall not be liable but, rather, shall be held harmless, for any and all losses and damages (compensatory, consequential, punitive or otherwise), injuries or deaths arising from or relating to the aforesaid activities, and (d) any purchase or use of any portion of the Community has been and will be made with full knowledge of the foregoing.

3.11 Provision of Services. The Association may provide or provide for services and facilities for the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and service fees for any services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Annual Assessment. By way of example, such services and facilities might include landscape maintenance, child care, pest control service, cable television or satellite service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services or facilities shall be provided. In addition, the Board shall be permitted to modify or cancel existing services or facilities, unless otherwise required by the Declaration.

ARTICLE IV MAINTENANCE

4.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property including, without limitation, any recreational facilities situated thereon. The Association shall also maintain, repair and replace, if necessary: (a) all entry features and monuments for the Community including the expenses for water and electricity, if any, provided to all such entry features, and (b) all landscaping (including sprinkler systems) located on the Common Property or public right-of-way within the Community; and (c) the masonry screening wall located within the three foot (3') landscape and wall maintenance easement shown on plat.

In addition, the Association shall have the right, but not the obligation, to maintain property not owned by the Association, whether within or outside the Community including, without limitation, publicly-owned property and property dedicated to public use, where the Board has determined that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

In the event that the Association determines that the need for maintenance, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, or the family, guests, lessees or invitees of an Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to

and become a part of the assessment to which such Owner is subject and shall become a lien against the lot of such Owner pursuant to Section 6.6 hereof.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

4.2 Owner's Responsibility. Except as provided in Section 4.1 of this Article, all maintenance of the Lot and all structures, foundations, roofs, parking areas, landscaping and other improvements thereon, including any screening fences, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Additionally, a Builder shall maintain any Lot for which it has contracted to purchase from the Declarant in a manner consistent with the Community-Wide Standard and this Declaration, which maintenance shall include the regular mowing, weeding, irrigating, fertilizing, pruning and trimming of such Lot.

In addition to its other enforcement rights, in the event that the Board determines that any Owner or Builder has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Board may cause such maintenance to be performed at the Owner's sole cost and expense, subject to the following procedures. Except in an emergency situation, the Board shall give the Owner prior written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If the Owner fails to do so, the Association may provide any such maintenance, repair or replacement without further notice, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot pursuant to Section 6.6 of this Declaration.

4.3 Party Walls and Similar Structures.

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

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

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

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

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

ARTICLE V INSURANCE AND CASUALTY LOSSES

5.1 Association Insurance. The Association shall have the authority to and shall obtain or cause to be obtained insurance for all insurable improvements that the Association is obligated to maintain, whether or not located on the Common Property. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Association also shall obtain a public liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on behalf of the Association and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least \$1,000,000.00.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board determines, in its sole discretion, that the loss is the result of the negligence or willful conduct of one or more Owners or occupants, then the Board may specifically assess the full amount of such deductible against the Lot of such Owner or occupant, pursuant to Section 6.6 hereof.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association and shall be governed by the following provisions:

(a) All policies shall be written with a company authorized to do business in Texas with a Best's rating of A or better.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

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

(d) All property insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if reasonably available, and shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the County.

(e) The Board shall make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Board of Directors, the manager, the Owners and Occupants and their respective tenants, servants, agents and guests;

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

(iii) that no policy may be canceled, subjected to non-renewal, invalidated or suspended on account of any curable defect or the conduct of any Owner or Occupant, or any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any

Owner or Mortgagee;

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled, subject to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment and, if reasonably available, shall at least equal three months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

The Association shall also obtain construction code endorsements, steam and boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs or the U.S. Department of Housing and Urban Development. It is the intent of this Section that the Association maintain insurance in effect meeting the requirements of the above-named entities as applicable, and as said requirements may change from time to time.

5.2 Individual Insurance. By virtue of taking title to a Lot, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of any Lot, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry property insurance on his Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on the Lot in an amount not less than \$100,000.00 per occurrence. Each Owner shall furnish a copy of such insurance policy or policies to the Association within ten (10) days of the Association's request for same. The property insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall remain in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within thirty (30) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the

cost thereof shall be assessed against the Owner and the Lot as a specific assessment pursuant to Section 6.6 hereof.

5.3 Damage and Destruction -- Insured by Association.

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

(b) Repair and Reconstruction. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within thirty (30) days following commencement of said sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to cover the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against each Lot and the Owner thereof for the deficiency. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

5.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all

improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

ARTICLE VI **ASSESSMENTS**

6.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of Lots, including the maintenance and insurance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

6.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot, including the Declarant, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments, as applicable, including, but not limited to, reasonable fines imposed in accordance with the terms of this Declaration and the Bylaws. Such assessments shall be established and collected as hereinafter provided.

All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or ten percent (10%) per annum on the principal amount due), and costs of collection (including, without limitation, reasonable attorney's fees), shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made until paid, as more particularly provided in Section 6.8 hereof. Each such assessment, together with late charges, interest and costs of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges against the Lot due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any First Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

No Owner may exempt himself from liability for assessments, by non-use of Common Property, abandonment of his Lot, or for any other reason. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination thereof with the Declarant or other entities for payment of all or a portion of assessments due therefrom.

6.3 Estoppel Certificates. The Association shall, within ten (10) days after receiving a written request therefore and for a reasonable charge, furnish a certificate signed by an officer of the

Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

6.4 Computation of Annual Assessments. It shall be the duty of the Board annually to prepare a budget covering the estimated costs of operating the Association during the coming fiscal year which shall include a contribution to a capital reserve for repair and replacement of capital items, if any, in accordance with a capital budget separately prepared. The annual assessment to be levied against each Lot shall be set at a level which is reasonably expected to produce total income to the Association at least equal to the total budgeted expenses, including reserves. The Board shall cause a copy of the budget and notice of the annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least thirty (30) days prior to the end of the current fiscal year.

The budget and the assessment shall automatically be effective upon adoption by the Board unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total Class "A" Members, and the Class "B" Member, if any. There shall be no obligation to call a meeting for the purpose of considering the budget except upon petition of the Members as provided for special meetings in Article II of the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the budget and notice of the assessment. In the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the immediately preceding year shall continue in effect for the current year.

Annual assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so provides by resolution, the annual assessment may be paid in two or more installments. If any Owner is delinquent in paying any assessment or installment thereof, the Board may, upon ten (10) days' prior written notice, accelerate the annual assessment and require all unpaid installments to be paid in full immediately. Unless otherwise provided by the Board, the assessment shall be due and payable in full on the first day of each fiscal year.

So long as the Declarant owns a Lot for development and/or sale as part of the Community, the Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting annual assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under this Article), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the budget and its characterization shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless provided for in a separate written agreement between Declarant and the Association.

6.5 Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments from time to time to cover unanticipated or unbudgeted expenses. Except as otherwise provided in Section 5.3(b) hereof, any special assessment shall require approval by the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Class "A" Members, and the Class "B" Member, if any. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

6.6 Specific Assessments. The Board shall have the power to levy specific assessments against a particular Lot or Lots constituting less than all Lots within the Community as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot or the Occupants thereof upon request of the Owner or Occupants, which benefits, items or services the Board may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

(b) to cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or rules of the Association, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their licensees, invitees or guests;

(c) for fines levied pursuant to this Declaration and the Bylaws; and

(d) for any other costs or expenses specifically authorized by this Declaration to be levied against a particular Owner or his or her Lot(s).

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

6.7 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot on the first day of the month following the month in which the Lot is made subject to this Declaration. The first annual assessment due on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the obligations or assessments commence.

6.8 Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest and costs of collection as set forth in Section 6.2 hereof, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes, or (b) liens for all sums unpaid on a First Mortgage duly recorded in the land records of the County (and all

amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument).

All other Persons acquiring liens or encumbrances on any Lot after the recording of the original Declaration shall be deemed to consent that such liens or encumbrances are inferior to the lien provided herein to secure the payment of future assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 *et seq.* (Vernon 1984), as it may be amended (the "Foreclosure Statute"), in like manner for any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute.

The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. The Association may sue for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the First Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the First Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be common expenses collectible from Owners of all Lots subject to assessment under this Declaration, including such acquirer, its successors and assigns.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or installments thereof that are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than fifteen (15) days shall incur a late charge in such amount as the Board may from time to time determine. In the event that the assessment remains unpaid after sixty (60) days, the Association may commence non-judicial foreclosure proceedings and/or institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt, or to enforce the lien by suit, judgment and judicial or non-judicial foreclosure in the same manner as other liens for the improvement of real property.

All payments shall be applied first to costs, then to late charges, then to interest, then to attorney's fees and then to delinquent assessments.

6.10 Budget Deficits During Declarant Control. During the Class "B" Control Period, notwithstanding the commencement date for assessments set forth in Section 6.7 of this Article, the Declarant may also annually elect either to pay annual assessments on its unsold Lots or to pay the Association the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of such election, the Association shall have a lien against all Lots owned by the Declarant to secure the Declarant's obligations under this Section 6.10, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against other Lots under this Article. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in-kind" contributions of services or materials, or any combination thereof.

6.11 Failure to Assess. Failure of the Board to fix the annual assessment amount or rate or to deliver or mail each Owner a notice of annual assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay such assessments. In such event, each Owner shall continue to pay annual assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may, without limitation, retroactively assess any shortfalls in collections or reimburse any excess in collections.

6.12 Exempt Property. The following property shall be exempt from payment of assessments:

- (a) any Lot owned in fee simple by the Association as Common Property; and
- (b) any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE VII ARCHITECTURAL STANDARDS

7.1 General. No structure shall be placed, erected or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Design Guidelines and upon approval of the Architectural Review Committee as required herein.

Any Owner may remodel, paint or redecorate the interior of structures on his Lot without approval unless modifications are visible from outside the structures. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

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

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

7.2 Architectural Review Committee. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by an Architectural Review Committee ("ARC") consisting of not less than three (3) nor more than five (5) persons.

So long as the Declarant owns any property for development and/or sale in the Community, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration of this right, the Board shall appoint the members of the ARC, a majority of whom shall be Board members. The remaining members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review.

7.3 Guidelines and Procedures. The Board may prepare, adopt and amend design and development guidelines and application and review procedures (the "Design Guidelines") which shall apply to all construction activities within the Community. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The Board shall make the Design Guidelines available to Owners, Builders, and contractors who seek to engage in construction within the Community and all such Persons shall conduct their activities in accordance with such Design Guidelines.

7.4 Submission of Plans and Specifications.

(a) No construction or improvements shall be commenced, erected, placed or maintained on any Lot, nor shall any exterior addition, change or alteration be made thereto, until the plans and specifications ("Plans") showing, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout, screening and estimated time schedules for commencement and completion of

construction have been submitted to and approved in writing by the ARC or appropriate subcommittee. A complete copy of the final Plans shall be submitted at least fifteen (15) days prior to the construction of improvements. The Plans shall show the nature, kind, shape, height, materials and improvements including, but not limited to, elevations and floor plans on each house intended to be built, square footage, roof pitch and percentage of brick or other material to be used as siding. The documents shall specify any requested variance from the setback lines, garage location or any other requirement set forth in this Declaration or the Design Guidelines. Samples of proposed construction materials shall be delivered promptly to the ARC upon request. At such time as the Plans meet the approval of the ARC, the ARC shall send written authorization to proceed and will retain the Plans. If disapproved by the ARC, the Plans shall be returned marked "Disapproved" and shall be accompanied by a statement of the reasons for disapproval, which statement shall be signed by a representative of the ARC. Any modification of the approved set of Plans must again be submitted to the ARC for its approval. The ARC's approval or disapproval, as required herein, shall be in writing. In no event shall the ARC give verbal approval of any Plans. If the ARC fails to approve or disapprove such Plans within forty-five (45) days after the date of submission, written approval of the matters submitted shall not be required and compliance with this Section 7.4 shall be deemed to have been completed. The ARC may consider pre-approval of standard Builder plans and landscaping specifications for each home planned for construction in the Community. Each Builder shall provide to the ARC the following information for the pre-approval process: (a) elevations of all home sides, (b) floor plan of first and second floors; and (c) landscaping standard specifications. The ARC may authorize certain types of modifications and improvements to be made without the necessity of applying for approval hereunder, provided they are made in strict compliance with the Design Guidelines.

(b) In reviewing each submission, the ARC may consider visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life; among other things.

(c) If construction does not commence on a project for which Plans have been approved within thirty (30) days of the estimated commencement date set forth in such approved Plans, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans to the ARC for reconsideration.

(d) If construction has commenced but is not completed on a project for which Plans have been approved within thirty (30) days of the estimated completion date set forth in such approved Plans, the Board may, in addition to any other remedy provided in this Declaration, cause the completion of the construction at the Owner's sole cost and expense, subject to the following procedures. The Board shall give the Owner prior written notice of the Association's intent to complete construction at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the construction deemed necessary. The Owner shall have ten (10) days after delivery of such notice within which to complete such construction or, in the event that construction cannot be completed within a ten (10) day period, to diligently pursue completion of construction within a reasonable time. If the Owner fails to do so, the Association may, among other

remedies, complete construction without further notice, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot pursuant to Section 6.6 of this Declaration.

7.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the ARC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

7.6 Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, the cost of compliance, or the terms of any financing shall not be considered a hardship warranting a variance.

7.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and not for engineering, structural design or quality of materials. Neither the ARC nor the Declarant shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for reviewing drainage plans or ensuring the effectiveness thereof, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot, nor for any defect in any structure constructed from approved Plans.

Neither the Declarant, the Association, the ARC, the Board nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits Plans and every Owner agrees that he will not bring any action or suit against the Declarant, the Association, the ARC, the Board or the officers, directors, members, employees and agents of any of them, to recover any such damages and hereby releases, promises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

7.8 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right, in addition to any other remedy provided herein for the enforcement of this Declaration, to enter the property, remove the violation and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment in accordance with Section 6.6 of this Declaration.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from further construction activity within the Community. In such event, neither the Declarant, the Association, its officers, nor its directors shall be held liable to any Person for exercising the rights granted by this Section.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

7.9 Notice of Violation. To evidence any violation of this Declaration, the Bylaws, rules or Design Guidelines by any Owner or Occupant, the Board of Directors may file, but is not required to file, in the deed records of the County, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice shall be assessed as a Specific Assessment against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing pursuant to Section 6.6 hereof.

ARTICLE VIII **USE RESTRICTIONS**

8.1 General. In addition to the use restrictions set forth herein, the Board may, from time to time, without consent of the Members, promulgate, modify or delete rules and regulations applicable to the Community, as provided in Section 3.3 hereof.

8.2 Occupants Bound. All provisions of the Declaration and of any rules promulgated by the Board that govern the conduct of Owners within the Properties and provide for sanctions against Owners shall also apply to all Occupants, tenants, guests and invitees of any Lot. Any lease on any Lot shall be deemed to provide that the lessee and all Occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws and the rules of the Association.

8.3 Restricted Activities. The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Signs. Displaying any sign of any kind to the public view on any Lot except (i) one (1) sign of not more than five (5) square feet advertising a Lot for rent or sale; (ii) signs used by the Declarant or by a Builder to advertise the Community during the development, construction and sales periods, including entry, directional and advertising signs; (iii) political signs advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than a reasonable period of time (in no event to exceed sixty (60) days in advance of the election to which they pertain and are removed within fifty (15) days after the election); (iv) personal signs indicating school affiliations, birth announcements, etc.; (v) contractors' signs used for advertising work performed on a Lot provided that such signs shall not be erected more than ninety (90) days following completion of the work; and (vi) signs indicating that a Residence is monitored by a security company. The Board shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal.

(b) Parking. Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places which are not screened from public view; provided, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Property. For purposes of this paragraph, an "inoperable" vehicle is a vehicle that does not have a current license tag or current registration or inspection sticker, or is obviously inoperable. A vehicle shall be considered "stored" if it remains in the same location on the property for fourteen (14) consecutive days or longer without prior approval of the Board. Any vehicle parked in violation of this Section or parking rules adopted by the Board may be towed in accordance with applicable law. An Owner may not modify his Residence such that the Owner would be prevented from parking or storing at least two (2) four-wheeled passenger vehicles in the garage of such Residence unless such Owner obtains the prior written approval of the ARC.

(c) Pets. Raising, breeding or keeping of animals, livestock or poultry of any kind other than generally recognized household pets. Reptiles, goats, sheep, hogs, swine, pigs (including, but not limited to, pot bellied pigs), monkeys, chickens, ducks, peacocks, pigeons and guinea fowl shall not be deemed to be household pets and are expressly prohibited. The keeping of pets shall be subject to rules adopted by the Board, which may include a reasonable limitation on number. Pets which are permitted to roam free, or, in the sole discretion of the Board, are of a known vicious or dangerous breed, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots, shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet on behalf of the Owner.

(d) Odors. Any activity that emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace or threaten the safety of the Occupants of other Lots.

(e) Laws. Any activity that violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

(f) Noxious or Offensive Activity. Any noxious or offensive activity that in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Property or to the Occupants of other Lots.

(g) Burning of Trash. Outside burning of trash, leaves, debris or other materials.

(h) Noises. Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to Occupants of other Lots, except alarm devices used exclusively for security purposes.

(i) Fireworks. Use and discharge of firecrackers and other fireworks.

(j) Dumping. Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream or elsewhere within the Community, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

(k) Rubbish, Trash and Garbage. Accumulation of rubbish, trash or garbage except within a reasonable time prior to regular garbage pick-ups, and then only in approved containers.

(l) Drainage. Altering the general grading, slope and drainage plan of a Lot after the Lot has been graded by the Declarant or a Builder without (i) written permission of the ARC and (ii) any approvals of the City or County and other appropriate agencies having authority to grant such approval which may be required. No person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. The Declarant hereby reserves for itself and the Association perpetual easement across the Community for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any adjacent property without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited within the Community. Neither Declarant nor the Association shall have any liability for damage or injury caused by flooding or surface runoff resulting from rainfall or other natural occurrences.

(m) Subdivision of Lots. Except as to the Declarant, subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and filed in the County.

(n) Single-Family. Occupancy of a Lot by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or not more than three adults who are not so related living together as a single household unit, and the household employees of either such household unit; provided, nothing herein shall be interpreted to restrict the ability of one or more adults meeting the definition of a single family from residing with any number of persons under the age of 18 over whom such adult has legal custody.

(o) Dangerous Conditions. Introduction of any plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community.

(p) Business Use. Any business, trade, manufacturing, commercial or similar activity, except that an Owner or Occupant residing on a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Community; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Community; and (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board.

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

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection.

This subsection shall not apply to any activity conducted by the Declarant or a Builder with respect to their development, construction and sale of Lots in the Community or their use of any Lots within the Community.

(q) Antennae and Roof Structures. Erection, construction, placement or installation of any television, radio or other electronic towers, serials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication upon a Lot or upon any improvement thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are

permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that reception of an acceptable signal would not be impaired or the cost of installation would not be unreasonably increased, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use and building regulations.

(r) Picketing. Engaging in any picketing on any Lot, easement, right-of-way or Common Property within or adjacent to the Community, or parking, storing or driving any vehicle in or adjacent to the Community which bears or displays any signs, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner, Declarant or Builder.

8.4 Prohibited Conditions. The following shall be prohibited within the Community:

(a) Structures, equipment or other items on the exterior portions of a Lot which have become rusty, dilapidated or otherwise fallen into disrepair;

(b) Clotheslines, garbage cans, above-ground storage tanks, mechanical equipment and other similar items, unless located or screened so as to be concealed from view of neighboring Lots and streets;

(c) Any fence, wall, hedge or shrub planting located near or adjacent to a roadway so as to obstruct the view of oncoming traffic;

(d) Any vegetable garden, hammock, statuary or play equipment unless located between the rear of the Residence and the rear lot line;

(e) Above-ground swimming pools; provided Jacuzzi, whirlpools or spas approved pursuant to Article VII shall not be considered an above-ground pool for the purposes of this section; and

(f) Flag poles, exterior sculpture, fountains, flags, birdhouses, bird baths, other decorative embellishments, or similar items, unless approved in accordance with Article VII of this Declaration and the Design Guidelines.

8.5 Leasing of Residences. "Leasing", for purposes of this Declaration, is defined as regular, exclusive occupancy of a Residence by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. Residences may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Residence or assignment of leases unless prior written approval is

obtained from the Board of Directors. No transient tenants may be accommodated in a Residence. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws and the rules and regulations. The Board may adopt reasonable rules regulating leasing and subleasing.

ARTICLE IX **CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking, Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefore. The provisions of Section 5.3 applicable to damage to improvements on the Common Property shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE X **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of First Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

10.1 Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "Eligible Holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or

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

10.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

10.3 Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

10.4 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or Class "A" Members representing at least sixty-seven percent (67%) of the total Class "A" votes and the Class "B" Member, if any consent, the Association shall not:

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

(b) Change the method of determining obligations, assessments, dues or other charges that may be levied against an Owner of a Lot;

(c) By act or omission change, waive or abandon any scheme of regulations or enforcements pertaining to architectural design, exterior appearances or maintenance of Lots and the Common Property (the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provisions);

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

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

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

10.5 Other Provisions for Mortgagees. To the extent possible under Texas law:

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

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

10.6 Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation pursuant to Sections 10.5(a) and (b) of this Article or to the addition of land in accordance with Article XII.

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

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

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the Common Property;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Property;
- (vi) responsibility for maintenance and repair of the Community;

- (vii) expansion or contraction of the Community or the addition, annexation or withdrawal of community to or from the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Lot;
- (xi)
- (xii) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xiii) any provision included in the Declaration, Bylaws or Articles of Incorporation that are for the express benefit of holders, guarantors or insurers of First Mortgages on Lots.

10.7 VA/HUD Approval. As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring by the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Community, the following actions shall require the prior approval of the VA or HUD: annexation of additional property to the Community; dedication of Common Property to any public entity; mergers or consolidations; dissolution of the Association; and material amendment of the Declaration, Bylaws or Articles of Incorporation.

10.8 Amendments by Board: Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitates the provision of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

10.9 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

10.10 Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas law for any of the acts set out in this Article.

ARTICLE XI
EASEMENTS

11.1 Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than one (1) foot, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant or the Association.

11.2 Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following provisions:

(i) the right of the Association to suspend the voting rights of a Lot Owner for any period during which any assessment against such Owner's Lot which is herein provided for remains unpaid and for an infraction of the Declaration, Bylaws or rules and regulations;

(ii) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community). No such Mortgage shall be effective unless an instrument agreeing to such Mortgage has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community) and two-thirds (2/3) of the Class "A" Members;

(iii) the right of the Association to dedicate or grant licenses, permits or easements over, under and through the Common Property to governmental entities for public purposes; and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association. No such dedication, transfer or conveyance shall be effective unless an instrument agreeing to such dedication or transfer has been approved by Declarant (so long as Declarant owns any property for development and/or sale within the Community) and two-thirds (2/3) of the Class "A" Members.

(b) Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Lot, if leased.

11.3 Easements for Utilities. There is hereby reserved to the Declarant blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which Declarant or the Association might decide to have installed to serve the Community. It shall be expressly permissible for the Declarant to install, repair, replace and maintain or to authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement.

11.4 Easement for Entry. In addition to the right of the Board to exercise self-help as provided in this Declaration, the Association shall have the right, but shall not be obligated, to enter upon any property within the Community for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

11.5 Easement for Maintenance. The Declarant hereby expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article IV. Such maintenance shall be performed with a minimum of interference to the quiet

enjoyment to Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

11.6 Easement for Entry Features. There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

11.7 Easement for Screening Walls. Declarant does hereby perpetually dedicate, establish, create and set aside a non-exclusive ten foot (10') wide easement over, across and upon the Community, such easement to be five feet (5') on either side of the entry features, monuments and screening/retaining walls. Such easements are reserved for the exclusive benefit of Declarant and the Association, and the designees of each, for the construction, maintenance and repair of entry features, monuments and screening/retaining walls. Owners shall not alter, paint, attach fences to or otherwise use such walls even though certain of such walls and/or the easement reserved herein may be located on such Owner's Lot.

11.8 Construction and Sale Period Easement. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules, Design Guidelines and any amendments thereto, so long as Declarant owns any property in the Community for development and/or sale, Declarant reserves an easement across the Community for Declarant and any Builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots including, but not limited to, business offices, signs and sales offices.

11.9 Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successor, assigns, licensees and mortgages, an easement over the Common Property for the purposes of enjoyment, use, access and development of the property described in Exhibit "A", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Property for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Property as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors and assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

ARTICLE XII
GENERAL PROVISIONS

12.1 Duration. This Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, perpetually to the extent provided by law; provided, however, so long as, and to the extent that, Texas law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval of the extensions signed by the then Owners of at least two-thirds (2/3) of the Lots and the Declarant (so long as Declarant owns any property for development and/or sale in the Community) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to terminate the same, in which case this Declaration shall be terminated; or (b) extended as otherwise provided by law.

Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

12.2 Amendment.

(a) By Declarant. Until termination of the Class "B" Control Period, this Declaration may be amended unilaterally at any time and from time to time by the Declarant. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Lot Owner shall consent thereto in writing. So long as the Declarant still owns property for development and/or sale as part of the Community, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse affect upon the right of any Owner.

(b) By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of the Class "A" Members representing at least two-thirds (2/3) of the Class "A" votes and the consent of the Declarant (so long as the Declarant owns any property for development and/or sale in the Community). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified

therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Declaration.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

12.3 Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots.

12.4 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

12.5 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

12.6 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

12.7 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

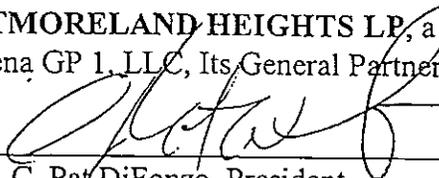
12.8 Notice of Sale, Lease or Acquisition. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, within thirty (30) days of the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

12.9 Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any property for development and/or sale in the Community), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

12.10 Litigation. No judicial or administrative proceeding (including, without limitation, arbitration proceedings) shall be commenced or prosecuted by the Association unless approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any. This Section shall not apply, however, to (a) actions or proceedings brought by the Association to enforce the provisions of this Declaration (including, without limitation, the judicial or non-judicial foreclosure of liens), (b) the imposition and collection of assessments as provided in Article VI hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by Class "A" Members representing at least seventy-five percent (75%) of the total Class "A" votes and the Class "B" Member, if any.

12.11 Use of the Words "Westmoreland Estates". No Person shall use the words "Westmoreland Estates" or any derivative or any other term which Declarant may select as the name of the development or any component thereof in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Westmoreland Estates" in printed or promotional matter solely to specify that particular property is located within the Community, and the Association shall be entitled to use the words "Westmoreland Estates" in its name.

IN WITNESS WHEREOF, the Declarant hereby executes this instrument this 24 day of May, 2001.

DECLARANT: WESTMORELAND HEIGHTS LP, a Texas limited partnership
By: Zena GP 1, LLC, Its General Partner
By: 
C. Pat DiFonzo, President

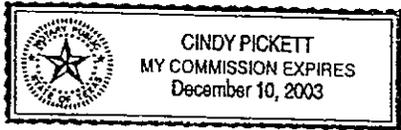
ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on the 24 day of May, 2001, personally appeared C. Pat DiFonzo, President of Zena GP 1, LLC, a Texas limited partnership and general partner of Westmoreland Heights LP, a Texas limited partnership and acknowledged that he executed the foregoing document on behalf of said entity.

Cindy Pickett

Notary Public in and for the State of Texas



AFTER RECORDING RETURN TO:

Westmoreland Heights LP
PO Box 92864
Southlake, Texas 76092

EXHIBIT "A"

Property Subject to Declaration

WESTMORELAND HEIGHTS, PHASE I, an Addition to the City of DeSoto, Dallas County, Texas, according to the Plat thereof recorded in Volume 2000237, Page 1681, Map Records, Dallas County, Texas, save and except Lot 1, Block F of Westmoreland Heights, Phase I.