

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WILLOW POINTE SECTION ONE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR WILLOW POINTE SECTION ONE

STATE OF TEXAS §
 §
 COUNTY OF HARRIS §

KNOW ALL MEN BY THESE PRESENTS:

THAT THIS DECLARATION is made on the date hereinafter set forth by Winchester Associates, Ltd., a Texas limited partnership (hereinafter referred to as "Declarant"), through Great America Companies, a Texas corporation, its Managing General Partner, acting herein by and through its duly authorized officers.

WITNESSETH

WHEREAS, Declarant is the owner of certain property heretofore platted and subdivided into that certain residential subdivision known as Willow Pointe Section One and is recorded under Clerk's File No. R358289 and Film Code No. 367074 of the Harris County, Texas Map Records (comprised of 101 Lots) and shown in Exhibit "A" attached hereto (the "Initial Property"); and,

WHEREAS, Declarant desires to hold, sell and convey the Initial Property subject to the following covenants, conditions, restrictions, reservations and easements, which are for the purpose of establishing a uniform plan for the development, improvement and sale of the Initial Property, together with such other land constituting the Property from time to time brought within the terms hereof pursuant hereto, and to insure the preservation of such uniform plan for the benefit of both present and future owners of the residential subdivision Lots within the Property; and,

NOW, THEREFORE, Declarant hereby adopts the following covenants, conditions, restrictions, reservations and easements which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (hereinafter defined) and which shall be applicable to all of the Property (hereinafter defined) from time to time subject hereto, and shall run with the land and shall bind all parties having or acquiring any right, title, or interest therein or any part thereof, their heirs or successors in title and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

503-82-3306

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, including any amendments thereto.

Section 2. "Assessable Tract" shall mean and refer to any Lot or Building Plot from and after the date on which paved public street access, and water and sanitary sewer service have been extended thereto.

Section 3. "Assessments" shall mean and refer to any or all of the Base Annual Assessments and Special Assessments (as defined below) referred to, contemplated or authorized herein or in any Supplemental Declaration from time to time filed of record.

Section 4. "Association" shall mean and refer to WILLOW POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation incorporated under the laws of the State of Texas, its successors and assigns.

Section 5. "Base Annual Assessments" shall mean and refer to the uniform assessment made against Assessable Tracts pursuant to Sections 3 and 5 of Article III hereof.

Section 6. "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 7. "Business" or "Business Purpose" shall mean and include, but not limited to, any occupation or venture whether for profit or not; any commercial, industrial or professional dealings; any commercial establishment of any sort; any activity which includes one or more employees of any kind, who is not a member of the family or domestic employee residing on the premises; any establishment frequented by customers; and other activities which are commercial, profit-oriented, or not for profit, industrial, professional or manufacturing in nature and/or which involve the production, manufacturing, trade or sale of goods and services; or giving of services without a fee and/or any non-profit organizations which have one or more employees and/or which are frequented by customers.

Section 8. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

Section 9. "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements dedicated or under contract to the Association for the use and benefit of the Owners of the Lots in the Property, and/or for the

benefit of other owners outside the Property, constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of The Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to, the following: structures for recreation; lake and drainage facilities; structures for storage or protection of detention equipment; fountains; statuary; sidewalks; common driveways; landscaping; guardhouses; esplanades; walls and other similar and appurtenant improvements. References herein to "the Common Facilities" or any "Common Facility" shall mean and refer to Common Facilities as defined respectively in The Declaration and all Supplemental Declarations.

Section 10. "Common Properties" shall mean and refer to all those areas of land within the properties except the platted Lots and public streets shown thereon, together with such other land as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Plats, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to the "Plats" shall mean and refer to all subdivision Plats from time to time filed of record in the Harris County, Texas Map Records with respect to Property covered by The Declaration.

Section 11. "Conveyance" shall mean and refer to conveyance of a fee simple title to a Lot.

Section 12. "Declarant" shall mean and refer to Winchester Associates, Ltd., the Declarant herein, and its successors and assigns if (i) such successors or assigns should acquire more than one Lot from Winchester Associates, Ltd., and (ii) such successors or assigns are designated in writing by Winchester Associates, Ltd., as a successor or assignee of all or part of the rights of Winchester Associates, Ltd., as Declarant hereunder.

Section 13. "The Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, supplemental restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration of Covenants, Conditions and Restrictions for Willow Pointe Section One as supplemented and/or amended, including any and all Supplemental Declarations.

Section 14. "Easements" shall mean and refer to the various utility or other easements of record, those shown on the map or Plats of the subdivisions within the Property and such other easements as are created or referred to in The Declaration.

Section 15. "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person or by a Single Family, excluding mobile homes or other non-permanent structures.

Section 16. "Lot" or "Building Plot" shall each mean and refer to each plot of land shown upon the recorded subdivision Plats from time to time within the boundaries of the Property and designated by Lot and block number, and to the Living Unit and other improvements constructed or to be constructed thereon, but shall not mean or include any other portions of the Property.

Section 17. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 18. "Modifications Committee" shall mean and refer to the committee created by the Board of Directors of the Association to exercise exclusive jurisdiction over the modifications, additions, or alterations made on or to existing Living Units or other improvements located on Lots as provided in Article IV hereof.

Section 19. "New Construction Committee" shall mean and refer to the committee created by the Declarant to exercise exclusive jurisdiction over all original construction of Living Units upon the Lots within the Property as provided herein.

Section 20. "Occupant" shall mean any person legally entitled to occupy and use all or a portion of the Property.

Section 21. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot or any other part of the Property or the surface estate thereof but excluding those having such interest merely as security for the performance of an obligation.

Section 22. The "Property" shall mean and refer to the Initial Property as defined above and any other tracts of real property annexed pursuant to Article XI or otherwise.

Section 23. "Residential Purposes" as used herein shall be defined as being for dwelling purposes, but held and construed to exclude hospitals, duplex houses, townhouses, condominiums, cooperative timeshares, and apartment houses, and to exclude commercial and professional uses or any other uses as a Business or for a Business Purpose, and uses for any immoral or illegal purposes.

Section 24. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been posted, published, mailed or otherwise given to Owners in accordance with the requirements of this Declaration.

Section 25. "Single Family" shall mean residential occupancy by members of a family who are related to each other by blood, adoption, or marriage, living together as a single housekeeping unit as distinguished from an apartment house, boarding house, commune or multi-family house.

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Section 26. "Supplemental Declaration" shall mean and refer to (i) any declaration of supplemental restrictions filed of record by Declarant, its successors or assigns, with respect to the Property, (ii) any supplemental declaration of annexation executed and filed of record by Declarant, its successors or assigns, bringing additional property within the scheme of The Declaration under the authority provided in the Declaration, and (iii) any supplemental declaration executed and filed of record by Declarant, its successors or assigns, purporting to do both of the foregoing. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to all or the respective Property covered by the relevant Supplemental Declaration.

Section 27. "Voting Power" means the total number of votes held by members (in a class of Members of the Association, or of Members other than Declarant, as the case may be) whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting.

**ARTICLE II
WILLOW POINTE HOMEOWNERS ASSOCIATION, INC.**

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in The Declaration, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Common Properties. The Board of Directors of the Association shall be empowered to oversee the activities of the Association and may take whatever lawful action that the Board, in its sole discretion, deems necessary to provide for the upkeep, development and aesthetic appearance of the Common Properties and Common Facilities and to enforce The Declaration for the common benefit of the Members of the Association. All rights of the Association herein and hereunder are vested in its Board of Directors unless specifically reserved to Declarant or a vote of the Members herein.

Section 2. Membership. Every person or entity who is a record Owner of any Lot, including Declarant, shall be a Member of the Association and be entitled to voting rights as herein provided. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association. Ownership of such land shall be the sole qualification for membership. Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein ascribed. If annexed, the Owners of Lots in each future section so annexed, as well as all Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Properties that

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may become subject to the jurisdiction of the Association as a result of such annexation, and the Common Facilities thereon, and shall be entitled to the use and benefit of the maintenance fund hereinafter set forth, provided that each future section must be impressed with and subject to the Assessments imposed hereby, and further, such sections shall be made by recorded Supplemental Declaration subject to all of the terms of this initial Declaration (as then amended and/or modified as herein permitted) and to the jurisdiction of the Association. Such additional stages of development may be annexed in accordance with the provisions of Article XI. Upon a merger or consolidation of the Association with another association, the properties, rights and obligations of the other association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the covenants and restrictions established by The Declaration, together with the covenants and restrictions applicable to the properties of the other merged association, as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants and restrictions established by The Declaration. All Lots in the Property are subject to the covenants, restrictions and other matters contained in The Declaration.

Section 3. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of Assessable Tracts with the exception of the Declarant (unless and until its Class B Membership converts to Class A Membership as contemplated below), and each such Class A Member shall be entitled to one vote for each Lot owned by such person or entity. When more than one person holds an interest in a single Lot, all such persons shall be Members. The vote of such Lot shall be exercised as such co-owners among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. If the co-owners of a single Lot do not vote unanimously and in unison, no vote for that Lot shall be counted as there shall be no fractional vote.

Class B. Class B Members shall be the Declarant herein, as such term is defined in Article I, Section 12, who shall be entitled to five (5) votes in the Association for each Lot owned by it. Class B Membership shall cease and be converted to Class A Membership (and Declarant may thereafter cast one Class A vote for each Lot owned by it, regardless of whether Declarant pays any or its full share of Assessments) on the happening of the earliest to occur of the following two events (a or b):

- (a) when 75% of the Lots are deeded to homeowners; or
- (b) on the twentieth anniversary date of the date hereof;

At such time that additional Property is annexed into the Association, the Class B Membership of the Declarant, shall, if it had previously ceased due to one of the

conditions listed above in (a) or (b), be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Property as well as to all Lots owned by Declarant in all other areas of the Property. Such reinstatement is subject to further cessation in accordance with the limitations set forth in the preceding paragraphs (a) and (b) of this Article, whichever occurs first. However, upon reinstatement due to annexation of additional Property, the period of time set forth in the preceding paragraph (b) of this Article shall be extended to the extent necessary such that in all circumstances it extends for a period no shorter than ten (10) years from the date of each such recorded annexation (i.e., Supplemental Declaration). Upon annexation of additional land into the Property, the 75% figure noted in the preceding paragraph (a) shall refer to 75% of the aggregate number of Lots from all sections of the Property and not merely 75% of the Lots from the Initial Property. The provisions of this grammatical paragraph shall be effective only to the extent not inconsistent with HUD/VA requirements. As used throughout this Declaration, HUD/VA requirements shall refer to those requirements, if any, applicable to the Property, imposed by the U.S. Department of Housing and Urban Development or the Veterans Administration.

Section 4. Non-Profit Corporation. WILLOW POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, has been or shall be organized, and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation. Declarant will convey the Common Properties to the Association upon final completion of construction of Common Facilities to be located thereon.

Section 5. Bylaws. The Association may make whatever rules or bylaws it may choose to govern the organization, provided that same are not in direct conflict with the terms and provisions hereof.

Section 6. Members' Easements of Enjoyment. Subject to the provisions of Section 7 below, every Member shall have a non-exclusive common right and easement of enjoyment in the Common Properties and Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

Section 7. Extent of Members' Rights and Easements. The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for in The Declaration, and shall also be subject to the following provisions:

- (a) The Association shall have the right to borrow money and, with the assent of Members entitled to cast not less than two-thirds (2/3) of the votes of Class A Members, to mortgage the Common Properties and Common Facilities.

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- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Properties and Common Facilities against foreclosure of any such mortgage.
- (c) The Association shall have the right to suspend the rights of any Member to enjoyment and use of the Common Properties and Common Facilities for any period during which an Assessment or other amount owed by the Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations including the setting of usage fees and deposits, governing the Members' use and enjoyment of the Common Properties and Common Facilities, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for each and any infraction of such rules and regulations.
- (e) Resident owners or occupants of dwellings within an area owned by the Declarant or its General Partner in the vicinity of but not within the Property may, with Declarant's or its General Partner's written authorization, use, on terms no more favorable than those made available to the Members, the Common Properties, together with a Common Facilities now or hereafter located thereon. The right of Declarant to grant such use privileges is hereby reserved by Declarant.
- (f) The Association shall have the right to dedicate, sell or convey all or any part of the Common Properties, or interests therein, to any public agency, authority, or utility or any utility district, or to any third party whomsoever, for such purposes and subject to such conditions as may be agreed to by a vote of the Members as hereinbelow provided. No conveyance of Common Properties other than the granting of utility easements upon the Common Properties, shall be made without such vote. No such dedication or conveyance (except granting of utility easements) shall be effective unless an instrument agreeing to such dedications or conveyance signed by Members entitled to cast not less than two-thirds (2/3) of the votes of Class A Members has been recorded.
- (g) The Association shall have the right to use, rent or lease any part of the Common Properties and/or Common Facilities for the operation (for profit or otherwise) of any service activity intended to serve a substantial number of residents in the Property, as well as property owners outside the Property, provided that any such use or contract providing for use of Common Properties and Common Facilities by property owners outside the Property shall be approved, prior to being entered into, by Members entitled to cast no less than two-thirds (2/3) of the aggregate of the votes of both Classes of Members voting in person or by proxy, at a meeting duly called for this purpose (or such

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an agreement may be entered into unilaterally by Declarant so long as it controls two-thirds (2/3) of the aggregate votes in the Association).

- (h) The Association shall have the right, but not the obligation, to contract on behalf of all Assessable Tracts, for garbage and rubbish pickup, and to charge the Owner (exclusive of Declarant) of each Assessable Tract for his pro rata share of the cost thereof, such pro rata share to be determined by dividing the number of Assessable Tracts being served into the total cost of providing such garbage and rubbish pickup. If the Association so elects, the charge to each Owner for garbage and rubbish pickup shall be in addition to or part of the Assessments described in Article III hereof.

- (i) The Association shall have the right, but not the obligation, to contract on behalf of a Assessable Tracts, for volunteer fire department, security and/or emergency medical ambulance services, and to charge the Owner (exclusive of the Declarant) of each Assessable Tract for his pro rata share of the cost thereof, such pro rata share to be determined by dividing the number of Assessable Tracts being served into the total cost of providing such security and/or emergency medical ambulance service. If the Association so elects, the charge to each Owner for security and/or emergency medical ambulance service shall be in addition to or part of the Assessments described in Article III hereof.

Section 8. Enforcement of Declaration. The Association shall have the power and authority to enforce the terms and provisions of The Declaration by legal action or other means provided for herein.

**ARTICLE III
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association as hereafter set forth in this Article III, Sections 3 & 4: (1) Base Annual Assessments or charges, and (2) Special Assessments, such Assessments to be established and collected as hereinafter provided. The Base Annual and Special Assessments, together with interest, collection costs and reasonable attorney's fees, shall be a charge on the Lot and shall be secured by a continuing Vendor's lien herein reserved and retained in favor of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, but shall be secured by the above-referenced continuing lien on the Lot so transferred as security for the delinquent obligation of

the prior Owner, and may be enforced against such Lot notwithstanding any such Conveyance.

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Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to improve, beautify, maintain, manage and operate the Common Properties and Common Facilities, and to pay taxes and insurance premiums thereon, and to promote the recreation, health, safety, convenience and welfare of the Members, such benefits to include, by way of illustration but not limitation: providing professional management or financial services; providing patrol or watchman service; providing service contractors to manage and maintain recreational facilities; providing and maintaining lighting standards, fixtures and facilities; providing and maintaining mechanical and electrical fixtures, plumbing equipment and drainage systems for the Common Properties and Common Facilities; fogging for insect control; providing garbage and rubbish pickup; maintaining the unpaved portion of, and any esplanades on, any street or right of way adjoining the Property; maintaining landscaping and other improvements (including, without limitation walls, retaining walls, monuments, signage and irrigation systems) contained within esplanades and cu-de-sacs in any public streets located within the Property, or in any landscape reserves; enforcing the provisions contained in The Declaration; employing, at the request of the Modifications Committee and/or New Construction Committee, one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committees in carrying out their duties and authority as set forth herein or, at the option of the Board of Directors of the Association, for the maintenance and/or improvement of the Common Properties or Common Facilities or for the benefit of the Members. The foregoing uses and purposes are permissive and not mandatory, and the decisions of the Board of Directors of the Association shall be final as long as made in good faith and in accordance with the Bylaws of the Association and any applicable governmental laws, rules and regulations. The proceeds of the assessments shall not be used to finance or reimburse the Declarant for any capital expenditure incurred in construction or other improvements within the subdivision. Notwithstanding any provision of The Declaration, all Common Properties shall be conveyed, unencumbered to the Association before HUD insures the first mortgage.

Section 3. Maximum Base Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the Board of Directors shall levy on each Assessable Tract and collect from the Owner thereof a Base Annual Assessment for each Building Plot, which shall be due and payable as provided hereinafter. Anything contained herein to the contrary or seemingly to the contrary notwithstanding, the Base Annual Assessments provided for herein shall be payable by the Owners of each of the Building Plots comprising Assessable Tracts within the boundaries of the Property, in the manner hereinafter set forth:

- (a) From and after January 1 of the year immediately following the conveyance of the first Building Plot to an Owner, the maximum Base Annual Assessment may

be increased by an amount in excess of 15% in a given year (over the maximum Base Annual Assessment permitted in the prior year) by the vote or written assent of at least 51% of a quorum of the Members present and voting at a meeting thereof duly called and held for such purpose.

- (b) The Board of Directors shall from time to time set, fix and levy the Base Annual Assessment at an amount not in excess of the maximum permitted herein.
- (c) The Base Annual Assessments shall be levied on a uniform basis as follows:
 - (1) Building Plots owned by Declarant, its designated successors and assigns.....None
 - (2) Building Plots conveyed by Declarant, to builders for the purposes of constructing a residence thereon.....50% of the Base Annual Assessments.
 - (3) Building Plots with completed residences sold to individuals (including corporate or other entity) homebuyers.....100% of the Base Annual Assessment

Section 4. Special Assessments for Capital Improvements. In addition to the Base Annual Assessments authorized by Section 3 hereinabove, the Association may levy against the Assessable Tracts in any calendar year one or more "Special Assessments" applicable to that year only, for the purpose of generating funds reasonably anticipated to be needed for purposes stated in Section 2 of this Article III, for capital improvements, replacements, and repairs; and provided that said Special Assessments are levied on a uniform basis as set forth above in Section 3(c) of this Article.

Section 5. Declarant Assessment Liability. As long as there is a Class B Membership, Declarant shall be responsible only for any shortages in the accounts of the Association, but only in the event that the maximum Base Annual Assessments chargeable under the provisions of Article III, Section 3 of The Declaration, are insufficient to cover the actual costs of maintaining the Property in accordance with the provisions of Article VIII, Section 2 of The Declaration or the actual costs of discharging the Association's other responsibilities under The Declaration.. If shortages can be reduced before Declarant's subsidy by a reduction in excess of non-life threatening services, such as trash removal, then those services may (and, if requested by Declarant, shall) be reduced to enable the Association to operate within its budget under the constraints of the limitations of Section 3 of this Article III and with the least possible subsidy from Declarant. This Section 5 shall be in effect for the first two (2) years following January 1 of the year immediately following the conveyance of the first Building Plot to an Owner.

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Section 6. Commencement of Base Annual Assessments; Due Dates. The Base Annual Assessments provided for herein shall commence on each Assessable Tract on a date established by the Board of Directors of the Association, provided, however, that the Base Annual Assessments shall not commence with respect to any Lot or Building Plot until such Lot or Building Plot becomes an Assessable Tract as defined herein. The Base Annual Assessment on each Assessable Tract for the first year of such Assessment shall be due and payable on the day a Lot or Building Plot becomes an Assessable Tract, and shall be pro rated for that year. After the first year, the Base Annual Assessment on such Assessable Tract for each such subsequent calendar year shall be due and payable on the first day of January in said year.

Section 7. Common Properties Exempt. All Common Properties as defined in Article I, Section 10, and all portions of the Property owned or otherwise dedicated to any political subdivision or municipal utility district (excluding portions of public or private utility easements located upon or within the boundaries of Lots, which shall not be exempt), shall be exempt from the Assessments and liens created, reserved and/or contemplated herein.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall determine the amount to be levied against each Assessable Tract for each calendar year, subject to the criteria and limitations set out in Sections 3, 4 and 5 of this Article. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Tracts showing the amount of each Assessment, which roster shall be kept in the office of the Association and shall be open to inspection by any Owner. The Association shall upon demand at any time, furnish to any Owner a certificate in writing signed by an officer or agent of the Association setting forth whether or not there are any unpaid Assessments against said Owner's Lot or Lots. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association; Liens Securing Assessments. Any Base Annual Assessment or Special Assessment not paid within thirty (30) days after the due date shall bear interest at the maximum per annum ceiling rate allowed by applicable Usury laws from the due date until paid. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the Building Plot, or pursue both such remedies to the extent not mutually exclusive. Interest, court and other collection costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such Assessment or charge. Each such Owner, by his acceptance of a deed to a Building Plot, hereby expressly vests in the Association, or its agents, the right and power (i) to bring actions against such Owner personally for the collection of such charges as a debt, and (ii) to enforce the aforesaid lien by methods available for the enforcement of such liens, including non-judicial foreclosure

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pursuant to Section 51.002, Tex. Prop. Code Ann. (Vernon 1983), and such Owner hereby expressly grants to the Association a private power of sale in connection with said lien. The Association may from time to time appoint trustees or substitute trustees for the purposes of enforcing such private power of sale. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of a Building Lot Owners. No Owner may waive or otherwise escape same for the Assessments provided for herein by non-use of the Common Properties or abandonment of his Building Plot. Mortgagees are not required to collect Assessments. Notwithstanding any contained herein to the contrary, failure to pay Assessments does not constitute a default under any HUD/VA or other insured mortgage.

Section 10. Subordination of the Lien to Mortgages. The lien securing any Assessment provided for herein shall be subordinate to the lien of any first mortgage(s) now or hereafter placed upon a Building Plot subject to the Assessment. In addition to the automatic subordination provided for above, the Association, in the discretion of its Board of Directors, may voluntarily subordinate the lien securing any Assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine. No such voluntary subordination shall be effective unless given in writing by the Association upon a vote of the Board of Directors.

Section 11. Exempt Property. The Assessments and liens created in this Article III shall apply only to Assessable Tracts.

**ARTICLE IV
NEW CONSTRUCTION COMMITTEE AND MODIFICATIONS COMMITTEE**

Section 1. New Construction Committee; Tenure. The Declarant shall initially appoint a New Construction Committee, consisting of not less than three (3) members, who need not be Members of the Association. The persons serving on the New Construction Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association shall have completed Living Units constructed thereon, at which time the New Construction Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by the Board of Directors of the Association. In the event undeveloped land is annexed into the Association after resignation of the original New Construction Committee, the Board of Directors may appoint a replacement New Construction Committee to act with the authority and purpose of the original New Construction Committee with respect to new construction, for such a term as the Board may designate, and subject to the Board's continuing right to remove members thereof and fill vacancies in such Committee. In the event of the death or resignation of any person serving on the New Construction Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors (unless same occurs during the Declarant control period specified in Section 2 hereof, in which event Declarant shall make such

appointment), who shall have all of the authority and power of his or their predecessor(s). A majority of the New Construction Committee may from time to time designate someone serving on the Committee to act for it as the Designated Representative. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article IV. However, the Committee may employ one or more architects, engineers, attorneys, or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for such services as they render to such Committee.

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Section 2. Rights of the New Construction Committee. The Declarant reserves the right to control and direct the New Construction Committee (including the making of a appointments thereto and removing any member thereof) for a period of fifteen (15) years from the date of the recording of this initial Declaration. At the time when future properties are annexed into The Declaration and the jurisdiction of the Association, if ever, the term of the members of the New Construction Committee will extend no less than ten (10) years from the date of the recordation of the annexation document (i.e., the Supplemental Declaration), and Declarant's control of the New Construction Committee shall continue throughout that extended term.

Should the Declarant decide to relinquish control of the New Construction Committee prior to the expiration of the control period stated above, it may do so by causing all its members to resign with a minimum of thirty (30) days prior written notice to the Board of Directors of the Association.

The New Construction Committee shall reserve the right to reasonably develop, adopt and from time to time revise architectural control guidelines for use in the review and approval of construction and improvement projects.

Section 3. Modifications Committee. Subsequent to the completion of the last home to be constructed within Willow Pointe Section One or any other tracts which become subject to the terms and conditions of The Declaration in accordance with its provisions, or at such earlier time as determined in the sole discretion of the Declarant, the Board of Directors is authorized to establish a Modifications Committee whose responsibility it will be to set standards, review and act upon a proposed modifications or improvements to those Lots where the Living Units have been constructed and sold and are owned by someone other than the Declarant, its successors or assigns, or a Builder (hereinafter defined). This Committee will be comprised of no less than three (3) members with at east two (2) members required to be Members of the Association. The Modifications Committee will be governed by the Board of Directors and shall adhere to all the provisions set forth in this Declaration.

The Modifications Committee shall promulgate standards and procedures governing its area of responsibility and practice. In addition thereto, the following requirements shall be adhered to: plans and specifications showing the nature, kind,

shape, color, size, materials and location of such modifications, additions, repairs or alterations, shall be submitted to the Modifications Committee for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation. Nothing contained herein shall be construed to limit the right of the Owner to remodel the interior of a Living Unit or to paint the interior of a Living Unit any color desired unless such interior area will be visible from a public street.

Section 4. General. A Property which is now or may hereafter be subjected to The Declaration is subject to architectural and environmental review. No Living Unit or other improvements (including, without limitation, garages, swimming pools, streets, driveways, sidewalks, drainage facilities, landscaping, fences, walks, fountains, statuary and flagpoles, but excluding improvements interior to a Living Unit) shall be constructed nor shall any such Living Unit or other improvements be modified or altered, without the prior written approval of the New Construction Committee or Modifications Committee, as appropriate.

This review shall be in accordance with this initial Declaration (as amended), any relevant Supplemental Declaration(s) (as amended), and such standards as may be promulgated by the Board, the New Construction Committee, or the Modifications Committee (subject to review by the Board), and such review and standards shall or may include, without limitation: general aesthetic character of improvements to be constructed; placement, orientation and location of improvements on a Lot; landscaping species, location and arrangement; architectural style; elevations; grading plan; color, quality, style and composition of exterior materials, including (without limitation) roofs, walls, patios, sidewalks and driveways; location, style, composition and extent of fencing; roof line and orientation; and appropriateness of permitting any proposed structures or improvements other than a Living Unit and garage, such as fountains, flagpoles, statuary, outdoor lighting, or others; neither Committee being obligated under any circumstances to approve any such other improvements if they reasonably determine that same would detract from the overall aesthetic quality of the area. Any obligation of Declarant to enforce provisions relating to historic preservation shall become the responsibility of the Association and the Committees created in this Article shall ensure compliance therewith. The Board of Directors shall have the right and power on behalf of the Association to enforce in Courts of competent jurisdiction decisions of either Committee.

Section 5. Submissions to New Construction Committee. To secure the approval (the "Final Approval") of the New Construction Committee, an Owner shall deliver to the Committee in form and substance reasonably satisfactory to the Committee the number of complete sets hereinafter set forth of:

- (a) The Design Development Plan which shall include:

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(i) a site plan showing the location, dimensions, orientation to boundary lines and the set-back lines, of proposed buildings, garages, other structures, driveway, sidewalks, fencing and all other improvements;

(ii) construction plans, specifications and sections for all floors and levels, height and size of each structure, including the living area square footage of each structure;

(b) drawings and details of all exterior surfaces, including the roof, all elevations, and including the color, quality and type of exterior construction materials with samples (collectively, the "Exterior Plan");

(c) all such other information as may be reasonably required which will enable the New Construction Committee to determine the location, scale, design, character, style and appearance of such Owner's intended improvements.

All of the foregoing (collectively, as original submitted and as revised and resubmitted, the "Plans") shall conform to the applicable provisions of The Declaration. The Owner shall supply as many sets, not to exceed three (3), as deemed appropriate by the Committee.

Where an Owner has neglected to submit a site plan and/or a schematic plan for approval, failure of the New Construction Committee to exercise the powers granted by this Article IV shall never be deemed a waiver of the right to do so either before or after a building or other improvement in the Property, or any exterior addition to or alteration therein, has been completed.

Where not otherwise specified herein or in an applicable Supplemental Declaration, the New Construction Committee also shall have the right to specify requirements for each Building Plot as follows: minimum setbacks; driveway access to adjacent street; the location, height and extent of fences, walls or other screening devices; garage access; and the orientation and placement of structures with respect to streets, walks and structures on adjacent property. There shall be no chain link fencing except as may be utilized by builders with the approval of the New Construction Committee for temporary storage of building materials and supplies during the construction phase. Roofing materials shall be as specified in Restrictions of Use and shall meet standards prescribed by the New Construction Committee and/or the Modifications Committee, as the case may be. The surface materials used in the construction of driveways and front sidewalks will consist solely of concrete, brick, stone or other similar hard surface material unless otherwise approved by the New Construction Committee and/or the Modifications Committee, as the case may be. No asphalt drives will be permitted. The New Construction Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed (or imposed in any applicable Supplemental Declaration) or meet its minimum construction requirements or architectural design

requirements or that might not be compatible, in its judgment, with the overall character and aesthetics of the Property.

The New Construction Committee has the full authority to enforce additional restrictions as they are created against any Building Plots within the Property, as imposed pursuant to any Supplemental Declaration. Such restrictions will be more clearly defined in Supplemental Declarations filed by Declarant in the Real Property Records of Harris County, Texas, creating and/or annexing additional Lots within the Property.

Section 6. Time for Review of Plans. Upon submission by the Owner to the New Construction Committee or the Modifications Committee of a written request for Final Approval and the submission to the New Construction Committee of the design Development Plan or the Plans (as applicable, and in either case, the "Submitted Plans"), or other plans to the Modifications Committee, each Committee shall endeavor to review same within fifteen (15) days from receipt of plans and notify Owner in writing whether the Submitted Plans are approved or disapproved. Committees, as required, shall approve the plans if such plans do not violate The Declaration (including the requirements of any applicable Supplemental Declaration, if any) or the guidelines and criteria from time to time existing and established by the Committees, and are consistent with their judgment on aesthetic compatibility of the proposed improvements with other portions of the Property and/or improvements thereon. Any such disapproval shall set forth the specific reason or reasons for such disapproval. Any failure by the New Construction Committee to approve or disapprove the Submitted Plans in writing within such fifteen (15) day period shall not constitute a waiver of the requirements of The Declaration. No construction of the improvements provided for in the Submitted Plans including those resubmitted under Section 7 of this Article shall be commenced until the receipt of the Committee's written approval of the Plans for such improvements. However, in the event the Modifications Committee fails to either (i) approve or disapprove Plans submitted to it, or (ii) request additional information reasonably required, within thirty (30) days after submission, the Plans for modifications shall be deemed approved.

Section 7. Review of Revised Plans. If the New Construction Committee shall disapprove any part of the Submitted Plans, the Owner may revise the Submitted Plans to incorporate such change requested by the New Construction Committee and may deliver the required number of complete sets of revised Submitted Plans to the New Construction Committee and the New Construction Committee shall endeavor to review such revised Submitted Plans within fifteen (15) days to determine Owner's compliance with the New Construction Committee's requested changes.

Section 8. Changes in Approved Plans. An Owner shall secure the written approval of the New Construction Committee to any material change or revisions in approved Plans in the manner provided in this Article for the approval of Plans.

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Section 9. Variances. The New Construction Committee may authorize variances from compliance with any other of the architectural provisions of The Declaration, including restrictions upon height, size, placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may, in the Committee's judgment and discretion, require. The Committee's decision on a requested variance shall be final, conclusive and binding. Such variances must be evidenced in writing, must be signed by at least a majority of the New Construction Committee, and shall become effective upon their execution. If such variances are granted, no violation of the covenants, conditions and restrictions contained in The Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of The Declaration for any purpose except as to the particular provision hereof covered by the variance, and only for the particular Lot in question, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations.

Upon the recommendation of the Modifications Committee, the Board of Directors may authorize variances, as stated above. Such Modifications Committee's variances must be evidenced by a written instrument signed by a majority of the Board of Directors and a majority of the Modifications Committee.

Section 10. Approved General Contractors. No construction of a building, structure, fence, wall, or other improvement shall be commenced on a Building Plot until the general contractor to perform such construction shall have been approved in writing by the New Construction Committee, which approval shall not be unreasonably withheld. In the event the Committee fails to approve or disapprove a general contractor within thirty (30) working days after such contractor's name is submitted to it, approval will not be required, and the provisions of this Section 10 will be deemed to have been fully satisfied.

Section 11. Construction Time. Construction of any structure approved by the Committee shall commence within six (6) months of such approval; and the completion of such construction must be accomplished within nine (9) months of the commencement of such construction.

Section 12. No Liability. Neither Declarant, the Association, Board of Directors, the New Construction Committee or Modifications Committee or the members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Building Plot 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, including specifically, but without limitation, consequences of any defect in any plans or specifications. Every person who submits plans or specifications to the New Construction Committee or Modifications Committee for approval agrees, by submission of such plans and

specifications, and every Owner agrees, that he will not bring action or suit against Declarant, the Association, the Board of Directors, the Committees, or any of the members thereof to recover any such damages.

Section 13. Rules and Regulations. The New Construction Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions hereof.

ARTICLE V EASEMENTS

Section 1. General. The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer, water, electricity, gas, telephone, and cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer and/or water house connections or electricity, gas or telephone and cable television lines or drainage facilities are installed within the Property, which connection lines or facilities or any portion thereof are in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within the Property in or upon which said connections, lines or facilities, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below.
- (b) Wherever sanitary sewer and/or water house connection or electricity, gas, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

Section 2. Reservation of Easements. Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer same.

Section 3. Surface Areas of Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded Plat(s). Electric, gas and telephone service shall be available to the Lots either under or above ground. For so long as underground service is maintained, the electric service to each Lot shall be uniform and exclusively of the type known as single-phase, 120/240 volt, three-wire, 60-cycle, alternating current. Easements for the service may be crossed by driveways, walkways, patios, brick walls and fences, provided the Owner or the homebuilders make any required or necessary arrangements

with the utility companies furnishing electric, gas and telephone service and provides and installs any necessary conduit of approved type and size under such driveways, walkways, patios, brick walls or fences prior to construction thereof. Such easements for the service shall be kept clear of a other improvements, and neither the grantor of the easements nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways, walkways, patios, brick walls or fences, providing conduit has been installed as outlined above) of the Owner located on the and covered by said, easements.

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Section 4. Public Streets and Common Properties. All Lots within the Property shall abut and have access to a public street. Public street rights-of-way are or shall be shown on the Plat(s). If ingress or egress to any residence is through the Common Properties, any conveyance or encumbrance of such area is subject to the Lot owner's easement.

Section 5. Association's Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents.

Section 6. Governmental Agency's Right to Enter. Any governmental agency, including, but not limited to the County, its agents, and employees, shall have the right of immediate access to the Common Properties at all times if necessary for the preservation of public health, safety and welfare.

Section 7. Drainage Easements. Easements for drainage in the subdivision are reserved as shown on the recorded plat or plats, such easements being depicted as "drainage easements." No Owner of any Lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically, and without limitation, no Owner may:

- (a) Alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easement; or
- (b) Alter change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements or remove trees or other vegetation therefrom without the prior written approval of the Committee; or

- (c) Construct, erect or install a fence or other structure of any type or nature within or upon such drainage easement; provided, however, fences may be permitted in the event proper openings are incorporated therein to accommodate the natural flow of water over said easement; or
- (d) Permit storage, either temporary or permanent, of any type upon or within such drainage easements;
- (e) Place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

The failure of any Owner to comply with the provisions of this Section shall in no event be deemed or construed to impose liability of any nature on the Committee and/or Declarant, and such Committee and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this Section shall in no way affect any other recorded easement in the subdivision.

**ARTICLE VI
UTILITY BILLS, TAXES AND INSURANCE**

Section 1. Obligations of the Owners. Owners' utility bills, taxes and insurance shall be governed by the following:

- (a) Each Owner shall have his separate electric, gas (unless total electric dwelling) and water meter and shall directly pay at his own cost and expense for a electricity, gas, water, sanitary sewer service, telephone service, cable television and other utilities used or consumed by him on his Lot.
- (b) Each Owner shall directly render for taxation his own Lot and improvements thereon, and shall at his own cost and expense directly pay taxes levied or assessed against or upon his Lot and his improvements and property thereon.
- (c) Each Owner shall be responsible at his own cost and expense for his own property insurance on the building and contents of his own Living Unit, and his additions/improvements thereto, including decoration, furnishings, and personal property therein; and also for his personal liability not covered by liability insurance for all Owners, if any, which may be obtained by the Association as part of the common expense in connection with the Common Properties or Common Facilities.

Section 2. Obligations of the Association. The Association shall have the following responsibilities regarding utility bills, taxes and insurance for the Common Properties and Common Facilities:

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- (a) The Association shall pay as a common expense of all Owners, for water, gas, electricity and other utilities used in connection with enjoyment and operation of the Common Properties or any part thereof.
- (b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay taxes levied or assessed against or upon the Common Properties and the improvements and the property appertaining thereto.
- (c) The Association shall have authority to obtain and continue in effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities, if any, located in the Common Properties and the contents thereof and the Association against the risks of loss or damage by fire and other hazards as are covered under standard, extended or all risk coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring Common Properties and Common Facilities, the Association, the Board of Directors, and/or the Association's Members, agents and employees, from and against liability in connection with the Common Properties and Common Facilities.

Director and Officer liability insurance and liability bonds are allowable coverages that may be obtained by the Association.

- (d) All costs, charges and premiums for utility bills, taxes and insurance to be paid by the Association as hereinabove provided shall be paid out of the maintenance fund as a common expense of the Owners and shall be a part of the Base Annual Assessment.
- (e) The Association's Board of Directors shall be required to 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 association's Board of Directors, its manager, the Owners 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, invalidated, or suspended on account of any act or omission of any one or more individual Owners or Occupants of Lots;

- (iv) that no policy may be canceled, invalidated or suspended on account of the conduct of 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 and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or Mortgagee; and,
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

If the damage or destruction to the Common Properties or Common Facilities for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Properties or Common Facilities, or (in the event no repair or reconstruction is made) after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s), as their interests may appear, if any Living Unit is involved, shall be retained by and for the benefit of the Association.

If it is determined, as provided for in Section 5 of this Article, that the damage or destruction to the Common Properties or Common Facilities for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds herein.

Section 4. Damage and Destruction. Immediately after the damage or destruction by fire or other casualty to all or any part of the property 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 paragraph, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty.

Any damage or destruction to the Common Properties or Common Facilities shall be repaired or reconstructed unless at least seventy five percent (75%) of all votes in the association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such

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information shall be made available; provided, however, that such extensions shall not exceed an aggregate of sixty (60) days. No Mortgagee of a Lot shall have the right to participate in the determination of whether the Common Properties or Common Facilities damaged or destroyed shall be repaired or reconstructed.

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

Section 5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's Members, levy a Special Assessment against all Class A Owners in proportion to the number of Lots. 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 cost of repair, such excess shall be deposited to the benefit of the Association.

**ARTICLE VII
CONDEMNATION**

In the event that all or any part of the Common Properties shall be taken by any authority having the power of condemnation or eminent domain, no Owner shall be entitled to notice thereof nor be entitled to participate in the proceedings incidental thereto. Any decision by the Board of Directors to convey Common Properties in lieu of and under threat of condemnation, or to accept an agreed award as compensation for such taking, shall abide by a quorum of the Members of the Association present and voting at a special meeting called for such purpose. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed as follows:

If the taking involves a portion of the Common Properties on which improvements have been constructed, then unless within sixty (60) days after such taking the Declarant and at least seventy five percent (75%) of the total number of votes in the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining Common Properties, to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article VI hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Properties, or if there is a decision made not to repair or restore, or if there are net funds remaining after any

such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

**ARTICLE VIII
MAINTENANCE AND REPAIRS**

Section 1. By the Owners. It shall be the duty, responsibility and obligation of each Owner at his own cost and expense to care for, maintain and repair the exterior of his Living Unit and all other improvements on his Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including the private driveway appurtenant to his Living Unit, sidewalks and fences which are appurtenant to and situated on his Lot, excepting only portions of improvements constructed by Declarant or the Association. The Association shall have no duty or obligation to any Owner in this regard. The Association shall have the right to enforce this restriction to the fullest extent permitted in The Declaration. If any improvement on a Lot is damaged or destroyed, the Owner shall diligently proceed to restore such improvement to the condition existing prior to such damage or destruction or, in the alternative, raze or remove such improvement and landscape the Lot pursuant to a "Removal Plan" approved by the Modifications Committee.

Section 2. By the Association. The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Property, Common Facilities and a parts thereof, including but not limited to, landscaped lawns, esplanades, parking areas and improvements and facilities owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost of repair and maintenance of any private driveway, sidewalk, and fence or fences which are appurtenant to such Owner's Lot or Living Unit. The Board of the Association has the additional right, but not the obligation, to have the grass or vegetation cut and maintained, in a neat and sanitary manner, on the land that is owned by or dedicated to a Flood Control District or any municipal utility district and that lies within the Property or adjacent thereto if the appropriate county agency's or utility district's maintenance standards are not acceptable to the Board of the Association.

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

Section 1. The Common Properties. The Association, subject to the rights of the Owners set forth in The Declaration, shall be responsible for the exclusive management and control of the Common Properties and all improvements thereon (including furnishings and equipment related thereto) and shall keep it in good, clean, attractive, and sanitary condition, order and repair, pursuant to the terms and conditions hereof. All landscape reserves shall be utilized and maintained as Common Properties for the Association and for no other purpose.

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The Board of Directors shall be authorized to contract with outside associations or with developers of areas outside the Property to provide usage of the recreational Common Facilities of this Association. Such contract shall set forth usage privileges and obligations and monetary payment for such privileges to the Association. All arrangements, fee schedules and contracts will be on terms no more favorable to such users than made available to the Members, but otherwise will be developed and approved at the total discretion of the Board of Directors of the Association.

Section 2. Sale of Common Properties. Notwithstanding anything contained in The Declaration to the contrary, the Common Properties cannot be mortgaged or conveyed without the consent of at least 2/3 of the Lot Owners (excluding the developer).

Section 3. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within the Property, conveyed to it by the Declarant. All land conveyed to the Association as Common Properties shall be free of all liens and other similar encumbrances. Notwithstanding anything contained in this Declaration to the contrary, Declarant, and the Association upon its succeeding to Declarant's rights, shall have the right, power and authority to dedicate to any public or quasi-public authority water lines, sanitary sewer systems, storm water facilities, streets and esplanades situated in the Common Properties and to terminate or modify these restrictive covenants with respect to such dedicated Property. Such dedication and acceptance thereof shall not prohibit the Association from maintaining the land and facilities located within dedicated areas, nor relieve the Owners of the obligation to participate in the payment of the cost of such maintenance.

Section 4. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this initial Declaration and any subsequent Supplemental Declarations. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot (and improvements located thereon), and suspension of the right to vote, and the right to use the Common Properties and Common Facilities and to receive services contracted for through the Association. In addition, the Board shall have the power (but not the obligation) to seek relief in any court for violations or to abate unreasonable disturbance. Notwithstanding any contained in The Declaration to the contrary, absolute liability will not be imposed on Lot Owners for damage to the Common Properties and Common Facilities or Lots in the Property.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right

or privilege reasonable to be implied from the existence of any right or privilege given to it herein necessary to effectuate any such right or privilege.

**ARTICLE X
RESTRICTIONS ON USE**

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Section 1. Residential Purposes Only.

- (a) Lots in the Property shall be used for Single Family Residential Purposes only, and any other purpose is hereby expressly prohibited. No part of the Property shall ever be used for a Business or Business Purpose, except use by Declarant or a Builder expressly allowed by The Declaration. The Residential Purpose restriction applies both to the type of construction and the actual use of same. Without limitation, no Living Unit may be occupied by more than one single family of not more than 10 members.

- (b) Unless the New Construction Committee otherwise agrees in writing, the exterior finish or construction of the front and sides of a Living Unit shall be brick, stone, or other masonry on the first floor. All exterior wood products shall require the written approval of the New Construction Committee. No building shall be erected, altered or permitted to remain on any single Lot, other than one single-family residential dwelling and a private garage for not less than two (2) cars nor more than three (3) cars. No carports shall be permitted on any Lot within the Property, except that porte cochere type structures that are attached and architecturally integrated into a Living Unit are allowed. No building or Living Unit in the Property shall exceed two and one-half (2-1/2) stories in height. Furnished attics and/or basements shall not be considered for the purposes of this Section to be separate stories. No Living Unit shall contain less than 1,000 square feet of heated/air-conditioned living space. All computations of living area shall be exclusive of attics, basements, open or screened porches, terraces, patios, driveways, and garages. Measurements shall be to the face of the outside walls of the living area.

Section 2. Reasonable Enjoyment. No nuisance shall ever be erected, placed, or suffered to remain upon any Lot in the Property and no Owner or Occupant of any Lot in the Property shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner or Occupant. The Association's Board of Directors is hereby authorized to determine what constitutes a violation of this restriction.

Section 3. Animal Husbandry. No sheep, goats, horses, cattle, swine (or pigs of any kind), poultry, dangerous animals (the determination as to what is a dangerous

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animal shall be in the sole discretion of the Association's Board of Directors), snakes or livestock of any kind shall ever be kept in or upon any part of the Property except that dogs, cats or other common household pets may be kept by the Owner or Occupant of any Living Unit with no more than three (3) adult animals at any one time and provided they are not kept for any commercial purpose. Any allowable pet that is kept in a household must be confined to its Owner's Lot either by constraints of a backyard fence, a leash or within the Living Unit. No animal shall be permitted to run freely away from its Owner's Lot and must be controlled by a leash. All applicable leash and licensing laws in effect, to the extent more restrictive than this provision, shall also apply to this animal husbandry provision and shall be complied with by all Owners and Occupants of Lots.

Section 4. Trash and Rubbish Removal. No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots or public or private streets. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.

Section 5. Oil and Mining Operations. No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, mineral or water shall be erected, maintained or permitted in the Property.

Section 6. Prohibited Use. Industrial use of the Property is prohibited. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or which is hazardous by reason of excessive danger of fire or explosion. No activity or use shall be permitted on or with respect to the Property which is determined by the Board to be obnoxious to or out of harmony with a distinctive residential community, including, but not limited to, any trailer houses and parks, junk or scrap metal yard, waste material business, any dumping, disposal, incineration or reduction of garbage or refuse, and any fire, bankruptcy or auction sale or operation. No excavations shall be made and no sand, gravel or soil shall be removed from the Property except in connection with a grading and/or building plan approved as provided by the New Construction Committee. No burning of rubbish or trash shall be permitted at any time. No storage area shall be permitted between any building and the front Property line of such Property. No above ground or underground storage tanks of any nature shall be permitted.

No activity, whether for profit or not, which is not related to single-family residential purposes, shall be carried on upon any Lot, except on those Lots which

