

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR**

**TUSCANY KELLER ADDITION  
Keller, Texas**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR TUSCANY KELLER ADDITION (the "Declaration") is made and entered by Tuscanly Keller, Ltd., a Texas limited partnership (the "Declarant").

WHEREAS, Declarant is the owner of all that certain real property situated in the City of Keller, Tarrant County, Texas, as more particularly described on the Plat (as hereinafter defined) recorded at Cabinet A Slide 9169 Records of Tarrant County, Texas, which Plat is attached hereto as Exhibit "A" and incorporated herein by reference for all purposes (the "Property"); and

WHEREAS, Declarant intends that the Property be developed as a high quality private residential community and that the Property be subject to the covenants, conditions, restrictions and easements set forth in this Declaration in order to establish a plan for the development, improvement and use of the Property with architectural, landscaping and maintenance controls; and

WHEREAS, Declarant intends to create the Association (as hereinafter defined) to have and to exercise the rights and duties, and to perform on behalf of, and as agent for, the Owners (as hereinafter defined), the functions set forth in this Declaration, including, but not limited to, the maintenance of certain portions of the Property, the reviewing of plans for improvements to be constructed on the Property and the assessing, collecting and disbursing of Assessments (as hereinafter defined) provided for herein; and

NOW, THEREFORE, Declarant adopts, establishes and imposes the following covenants, conditions, restrictions, easements, liens and charges upon the Property and declares that the Property and all portions thereof are and shall be held, transferred, assigned, sold, conveyed and occupied subject to all such covenants, conditions, restrictions, easements, liens and charges.

**ARTICLE I  
DEFINITIONS**

1.01 Definitions. Unless otherwise defined in this Declaration, the following words when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

- (a) "Architectural Control Committee" shall have the meaning set forth in Section 8.01 hereof.
- (b) "Assessment" or "Assessments" shall have the meaning set forth in Section 4.01 hereof.
- (c) "Assessment Lien" shall have the meaning set forth in Section 4.08 hereof.
- (d) "Association" shall mean the non-profit corporation created under the laws of the State of Texas under the name, "Tuscanly Keller Homeowners Association, Inc." or such other name as is selected by Declarant or Declarant's successors.
- (e) "Association Documents" shall mean the Articles of Incorporation (herein so called) and the Bylaws (herein so called) of the Association, as amended and modified from time to time, and the resolutions and certifications adopted by the Association from time to time.
- (f) "Board" shall mean the board of directors of the Association as elected from time to time pursuant to the Association Documents.
- (g) "City" shall mean the City of Keller, Texas.
- (h) "Class A Members" shall have the meaning set forth in Section 3.04 (a) hereof.
- (i) "Class B Member" shall have the meaning set forth in Section 3.04 (b) hereof.

- (j) "Common Expenses" shall have the meaning set forth in Section 4.02 hereof.
- (k) "Common Properties" shall mean the following:
- (i) The Streets (as hereinafter defined) and any and all guardhouses or gatehouses and controlled access and entry monitoring devices, street lighting designs (and all elements thereof);
  - (ii) Any and all greenbelt areas, lakes and ponds, landscape and/or pedestrian easements, floodways, creeks, drainage ways, open spaces or other similar areas as shown on the Plat (as hereinafter defined) of the Subdivision, whether within or surrounding or along the boundaries of the Property, including without limitation Lot 22, Block A, and any portion thereof lying within or beneath the Ponds, the Landscape Entry Easement (herein so called) on Lots 1, 11 and 12, Block B, and the Landscape, Pedestrian, Private Drainage and Utility Easement (herein so called) on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Block B;
  - (iii) Any other property or improvements, for which Declarant and/or the Association have or may hereafter become obligated to maintain, improve or preserve;
  - (iv) The Entry Areas (as hereinafter defined) and any land near or adjacent to the Subdivision entrances at Roanoke Road and Knox Road, and any land in the Property adjacent to such roads, on which Declarant and/or the Association is granted or reserved any easement for any purposes whatsoever, including but not limited to installing and maintaining guardhouse or gatehouse structures and other System components, entry signage and screening and retaining walls for the Subdivision;
  - (v) Any and all landscaping, walls, planters, pillars, entry ways, walkways, berms, ledges, sprinkler systems, tree wells, retaining walls (if any), gazebos, docks, signs, wood structures, markers, lights, lighting systems, poles, flags, water features, fountains and any other improvements installed by Declarant or the Association on the Streets or on any other Common Properties or on, over, or within the lakes or ponds, and all equipment, accessories, utilities and machinery used in the operation or maintenance of any of the Common Properties; and
  - (vi) Any other fixtures, structures or improvements installed by Declarant or the Association on any Lots within the Subdivision and which are not expressly made the responsibility of the Lot Owners pursuant to the provisions of this Declaration.
- (l) "Common Service" or "Common Services" shall mean such services provided from time to time by Declarant or the Association, or obtained by the Association on behalf of, and for the common benefit of, the Owners that have been approved by the Board and/or by the Members (as hereinafter defined) at a meeting at which a Special Quorum (as hereinafter defined) was present as provided in Section 3.05(b) hereof.
- (m) "Declarant" shall mean Tuscany Keller, Ltd., a Texas limited partnership, and its successors and any assignee of Declarant to whom Declarant, by instrument recorded in the Real Property Records of Tarrant County, Texas, expressly assigns all of Declarant's rights and obligations as Declarant under this Declaration. No Person (as hereinafter defined) purchasing one (1) or more Lots shall be considered a "Declarant", unless Declarant makes the express and specific assignment referenced in the immediately preceding sentence.
- (n) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Tuscany Keller, and all amendments and modifications thereto filed for record in the Real Property Records of Tarrant County, Texas.
- (o) "Default Rate of Interest" shall mean the lesser of (i) fifteen percent (15%) per annum, or (ii) the maximum allowable contract rate of interest under applicable law.
- (p) "Easement Areas" shall mean all easements as shown on the Plat.
- (q) "Entry Areas" shall mean those Common Properties as shown on the Plat or as described in Subsection (k) of this Article along, near or adjacent to the Subdivision entrances at Roanoke Road and Knox Road.

- (j) "Common Expenses" shall have the meaning set forth in Section 4.02 hereof.
- (k) "Common Properties" shall mean the following:
- (i) The Streets (as hereinafter defined) and any and all guardhouses or gatehouses and controlled access and entry monitoring devices, street lighting designs (and all elements thereof);
  - (ii) Any and all greenbelt areas, lakes and ponds, landscape and/or pedestrian easements, floodways, creeks, drainage ways, open spaces or other similar areas as shown on the Plat (as hereinafter defined) of the Subdivision, whether within or surrounding or along the boundaries of the Property, including without limitation Lot 22, Block A, and any portion thereof lying within or beneath the Ponds, the Landscape Entry Easement (herein so called) on Lots 1, 11 and 12, Block B, and the Landscape, Pedestrian, Private Drainage and Utility Easement (herein so called) on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Block B;
  - (iii) Any other property or improvements, for which Declarant and/or the Association have or may hereafter become obligated to maintain, improve or preserve;
  - (iv) The Entry Areas (as hereinafter defined) and any land near or adjacent to the Subdivision entrances at Roanoke Road and Knox Road, and any land in the Property adjacent to such roads, on which Declarant and/or the Association is granted or reserved any easement for any purposes whatsoever, including but not limited to installing and maintaining guardhouse or gatehouse structures and other System components, entry signage and screening and retaining walls for the Subdivision;
  - (v) Any and all landscaping, walls, planters, pillars, entry ways, walkways, berms, ledges, sprinkler systems, tree wells, retaining walls (if any), gazebos, docks, signs, wood structures, markers, lights, lighting systems, poles, flags, water features, fountains and any other improvements installed by Declarant or the Association on the Streets or on any other Common Properties or on, over, or within the lakes or ponds, and all equipment, accessories, utilities and machinery used in the operation or maintenance of any of the Common Properties; and
  - (vi) Any other fixtures, structures or improvements installed by Declarant or the Association on any Lots within the Subdivision and which are not expressly made the responsibility of the Lot Owners pursuant to the provisions of this Declaration.
- (l) "Common Service" or "Common Services" shall mean such services provided from time to time by Declarant or the Association, or obtained by the Association on behalf of, and for the common benefit of, the Owners that have been approved by the Board and/or by the Members (as hereinafter defined) at a meeting at which a Special Quorum (as hereinafter defined) was present as provided in Section 3.05(b) hereof.
- (m) "Declarant" shall mean Tuscanly Keller, Ltd., a Texas limited partnership, and its successors and any assignee of Declarant to whom Declarant, by instrument recorded in the Real Property Records of Tarrant County, Texas, expressly assigns all of Declarant's rights and obligations as Declarant under this Declaration. No Person (as hereinafter defined) purchasing one (1) or more Lots shall be considered a "Declarant", unless Declarant makes the express and specific assignment referenced in the immediately preceding sentence.
- (n) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Tuscanly Keller, and all amendments and modifications thereto filed for record in the Real Property Records of Tarrant County, Texas.
- (o) "Default Rate of Interest" shall mean the lesser of (i) fifteen percent (15%) per annum, or (ii) the maximum allowable contract rate of interest under applicable law.
- (p) "Easement Areas" shall mean all easements as shown on the Plat.
- (q) "Entry Areas" shall mean those Common Properties as shown on the Plat or as described in Subsection (k) of this Article along, near or adjacent to the Subdivision entrances at Roanoke Road and Knox Road.

- (r) "Indemnitees" shall have the meaning set forth in Section 2.01(h) hereof.
- (s) "Pond(s)" shall mean the series of two ponds located primarily in the Subdivision as shown on the Plat.
- (t) "Pond and Pedestrian Easement Perimeter Lots" shall mean Lots 15, 16, 17, 18, 19, 20 and 21, Block A and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Block B, as shown on the Plat.
- (u) "Lot" or "Lots" shall mean the forty three (43) single family residential lots as shown on the Plat, as amended from time to time, and designated as a "Lot" thereon and as shown on the Plat; provided, however, that the term "Lot" or "Lots" as used in this Declaration shall not include the areas comprising the public street right of way, or Lot 22, Block A, which constitute common areas, floodways and/or open space.
- (v) "Maintenance Agreement" shall mean, whether one (1) or more, any and all agreements, if any, which may be hereafter entered into between Declarant and/or the Association and the owner(s) and/or the owners of any other adjacent property regarding maintenance responsibility for the ponds, spillways, or the appurtenances relating thereto, or with respect to any other maintenance item, whether or not associated with the Ponds, and recorded in the Real Property Records of Tarrant County, Texas.
- (w) "Member" or "Members" shall mean each Owner of a Lot.
- (x) "Member in Good Standing" or "Members in Good Standing" shall have the meaning set forth in Section 3.03 hereof.
- (y) "Mortgagee" shall have the meaning set forth in Section 10.09 hereof.
- (z) (reserved)
- (aa) "Notice of Unpaid Assessments" shall have the meaning set forth in Section 4.08 hereof.
- (bb) "Owner" or "Owners" shall mean each and every Person who is a record owner of a fee or undivided fee interest in any Lot; provided however, "Owner" shall not include Persons who hold an interest in a Lot as security for the performance of an obligation.
- (cc) "Plans" shall have the meaning set forth in Section 8.03(c) hereof.
- (dd) "Plat" shall mean the Final Plat of "Tuscany Keller", an addition to the City of Keller, Texas, recorded at Cabinet \_\_\_\_, Slide \_\_\_\_, Plat Records of Tarrant County, Texas, pertaining to the Property, which such Tuscany Keller Addition is to be commonly known as "Tuscany Keller."
- (ee) "Per-Lot Regular Assessment Amount" shall have the meaning set forth in Section 4.02 hereof.
- (ff) "Person" or "Persons" shall mean any natural person, corporation, partnership, trust or other legal entity.
- (gg) "Property" shall mean the real property situated in the City of Keller, Tarrant County, Texas, more particularly described on the Plat attached as Exhibit "A" hereto.
- (hh) "Regular Assessments" shall have the meaning set forth in Section 4.02 hereof.
- (ii) "Regular Quorum" shall have the meaning set forth in Section 3.05(c) hereof.
- (jj) "Special Member Assessments" shall have the meaning set forth in Section 4.04 hereof.
- (kk) "Special Purpose Assessments" shall have the meaning set forth in Section 4.03 hereof.
- (ll) "Special Quorum" shall have the meaning set forth in Section 3.05(b) hereof.

- (mm) "Streets" shall mean the area shown on the Plat and consisting of the areas shown thereon as Tuscany Terrace, Milano Way, Venetian Street, Firenze Street, Chianti Lane and Toscana Drive, together with all alleys within the Subdivision, and all pavement, curbs, street lights, signs and related facilities installed thereon.
- (nn) "Street Improvements" shall have the meaning set forth in Section 2.01(b) hereof.
- (oo) "Street Reserve Fund" shall have the meaning set forth in Section 2.01(c) hereof.
- (pp) "Subdivision" shall mean the Property as shown on the Plat, to be commonly known as "Tuscany Keller".
- (qq) "System" shall have the meaning set forth in Section 2.02 hereof.
- (rr) "Violation Fine" shall have the meaning set forth in Section 10.11 hereof.

## **ARTICLE II**

### **STREETS**

2.01 Streets. The Streets are public streets and have been dedicated to the City of Keller, and are not owned by the Association. The following special provisions are applicable to the Streets:

- (a) The City will own the Streets; provided, however, neither Declarant nor the Association makes any commitment that the Streets will always be public streets (see Section 2.01(j) hereof). Changes in ordinances of the City or other Association action could cause the Streets to no longer be public streets.
- (b) The City shall, and has the sole responsibility to, maintain the Streets in a condition not less than the minimum standards required for public streets in the City, and the City shall make any repairs to the Streets reasonably deemed necessary by the City to ensure emergency access. Such maintenance and repairs of, and any improvements to, the Streets shall be referred to as the "Street Improvements." The Association, so long as the Streets are public and owned by the City, will have no obligation or right to maintain the Streets or Street Improvements, or to provide any street cleaning services.
- (c) At such time in the future that the Streets become private streets, the Association will establish and maintain a maintenance reserve fund (the "Street Reserve Fund") to pay future extraordinary maintenance costs of the Streets to be collected from the Owners through Assessments. The Street Reserve Fund shall equal One Hundred Thousand and No/100 Dollars (\$100,000.00) within ten (10) years after the date of the Streets becoming private and going into ownership of the Association, which such amount equals the estimated cost of restoring the Streets following ten (10) years of ordinary anticipated use. Following expenditure of any amounts from the Street Reserve Fund for such extraordinary maintenance requirements or restoration, the amount thereof shall be reestablished within such time and in an amount consistent with the purposes thereof.
- (d) If in the future the Streets become private, at such time the Association will dedicate to the City a permanent easement to enter onto and use the Streets for the provision of police and fire protection, and code enforcement, and for any other purpose relating to the delivery of governmental service or governmental function and to remove any vehicle or obstacle on the Streets that impairs emergency access.
- (e) Utilities serving the Subdivision shall be installed only in the Streets or in designated utility easements shown on the Plat (except for individual utility connections from the common utility lines to improvements constructed on a Lot).
- (f) The Plat contains a dedication to the City, and to all public utility entities providing utility service to the Subdivision, the right to use the Streets to construct, install, maintain, operate, inspect, remove and reconstruct the facilities, equipment and systems that serve the Subdivision, but the City and such utility companies shall repair any damage to the pavement or other improvements on the Streets resulting from any such installation, maintenance, reconstruction or such other work.

- (g) If the Association maintains mechanism(s) to control access to the Streets, the Association shall maintain such mechanism(s) in good operating condition so as to allow twenty-four (24) hour access to the Streets by the City and the providers of utility services to the Subdivision.
- (h) Each Owner agrees to release and hold harmless the Association from claims for damages to property and injury to persons (including death) that arise out of the use of the Streets or Street Improvements by the owner or its assigns (excluding only gross negligence) and that are caused by the failure of the Association or City to design, construct or maintain the Streets or Street Improvements in accordance with City standards.
- (i) Notwithstanding the provisions of Section 10.03 hereof, the provisions of this Section relating to access to the Streets by the City and providers of utility services to the Subdivision, or relating to the maintenance and repair obligations of the City or Association for the Streets, cannot be changed without the written consent of the City, until such time, if at all, the Streets become private streets as provided in Section 2.01(j) hereof.
- HOA!*  
(j) The Owners of at least thirty-two (32) Lots and Declarant (for so long as Declarant owns at least one (1) Lot) shall have the right, at any time upon not less than sixty (60) days prior written notice given to Declarant and the Association, to request the City to release all (but not less than all) of the Streets to the Association as private streets. If the City agrees to release the Streets as private streets:
- (i) Prior to dedication of the Streets to the Association, the City shall make repairs, if any, to the Streets required to cause the Streets to be brought into compliance with City standards for public streets;
- (ii) Upon completion of such work as approved by the City, the City shall release and vacate the Streets to the Association by any method acceptable to the City.
- (k) Upon the release or vacation of public streets as provided in Section 2.01(j) hereof, Association shall maintain sidewalks in accordance with plans approved by the City on those Lots upon which the City may require connecting sidewalks within the Subdivision into public sidewalks.

**2.02 Limited Access System.** If at such time Streets are released or vacated by the City, Association will install a mechanical system that limits vehicular access to the Streets from public streets (the "System"). By accepting a deed to a Lot, each Owner acknowledges the following:

- (a) The Board will have the sole authority, in the Board's sole and exclusive discretion, to determine when the System will become operational;
- (b) Neither Declarant nor the Association is responsible for providing security to the Owners or their family members, guests, invitees or their property. The purpose of the System will be to provide some degree of restriction of vehicular access onto the Streets. However, there is absolutely no guarantee or assurance whatsoever that the presence of the System will in any way increase the personal security or safety of any Owner or their family members, guests, invitees or their property. Each Owner's personal and property security is that Owner's own responsibility;
- (c) The City will have access to the Property for law enforcement purposes. Each Owner must look to the City for the provision of law enforcement and police protection; provided, however, it is not intended hereby that the City police will make routine patrols, enforce traffic or parking ordinances or prepare accident reports in the Property;
- (d) The System is not intended to replace or to serve in lieu of individual alarm systems or other measures to provide security at a residence or within any Lot or Lots. Each Owner is encouraged to install such Owner's own personal security devices to the same extent that would be prudent if the System did not exist;
- (e) The System will be installed based upon the representations of vendors regarding the operational and performance capabilities of the components of the System. Declarant disclaims any and all representations and warranties, express or implied, and Declarant makes no representations or warranties of any nature whatsoever regarding the System, including, without limitation, any implied warranty of merchantability or fitness for the purpose for which it was designed. Declarant does not expressly or

impliedly guarantee that the System will avert or prevent occurrences or consequences which the System is designed to avert or prevent;

- (f) The System shall be owned by the Association. Operation of the System shall be the responsibility of the Association. Declarant shall not be required to operate or maintain the System. Costs of operation and maintenance of the System will be paid by the Owners through Assessments. Each residence constructed on a Lot must be connected into the System, and each Owner is responsible for using the System in the proper manner and within the rules and regulations relating thereto as may be adopted from time to time by the Association.

**ARTICLE III**  
**PURPOSE, MEMBERSHIP, AND VOTING**  
**RIGHTS IN THE ASSOCIATION**

3.01 Purpose of the Association. The Association shall have and exercise the rights, and shall perform the functions of, the Association for the benefit of, and as agent for, the Owners as set forth in this Declaration.

3.02 Membership. Every Owner (including Declarant) shall automatically be and must remain a Member of the Association so long as such Person is an Owner. The membership of a Person in the Association shall terminate automatically whenever such Person ceases to be an Owner, except that such termination shall not release or relieve such Person from any liability or obligation arising under this Declaration during such Person's period of ownership. Any transfer of title to a Lot shall operate automatically to transfer membership in the Association appurtenant to such Lot to the new Owner of such Lot.

3.03 Member in Good Standing. A Member shall be considered to be a "Member in Good Standing" (herein so called) and eligible to vote on Association related matters if such Member:

- (a) has at least ten (10) days prior to the taking of any vote by the Association, fully paid all Assessments or other charges levied by the Association, as such Assessments or charges are provided for hereunder;
- (b) does not have a Notice of Unpaid Assessments filed by the Association against the Lot owned by such Owner; and
- (c) has discharged all other obligations to the Association as may be required of Members hereunder or under the Association Documents.

The Board shall have the right and authority, in the Board's sole and absolute discretion, to waive the ten (10) day prior payment requirement in Section 3.03 (a) hereof and require only that such payment be made at any time before such vote is taken if the Board shall determine, in the Board's sole and exclusive judgment, that extenuating circumstances exist which have prevented prior payment. Any Member not conforming with the provisions of this Section shall be declared by the Board not to be a Member in Good Standing and any such Member shall not be entitled to vote on matters before the Association until such time as Member in Good Standing status is attained and so declared by the Board.

3.04 Voting Rights. The Association shall have the following two (2) classes of voting membership:

- (a) CLASS A "Class A Members" (herein so called) shall be all Members other than Declarant (except as provided in Section 3.04(b) hereof). Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. If any Lot is owned by more than one (1) Owner, the number of votes attributable to such Lot still shall be one (1), and such one (1) vote may be cast only if all of the Owners owning such Lot, prior to the time of the vote in question, have delivered to the Association a written agreement as to how such vote is to be cast or a written designation of one (1) of such Owners to cast the vote attributable to such Lot. Any Owner who is not an individual must designate, upon request of the Board, a representative to act for such Owner in Association matters and to cast the vote of such Owner, such designation shall be made only in writing to the Board.
- (b) CLASS B The sole "Class B Member" (herein so called) shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot which it owns. The Class B membership shall cease at such time as Declarant and Declarant's affiliates together own less than two (2) lots. Thereafter, Declarant shall be a Class A Member and have the rights of a Class A Member for so long as Declarant owns at least one (1) Lot.

.05 Quorum. Notice and Voting Requirements.

- (a) Except as otherwise specifically provided in this Declaration, any action requiring the vote or approval of the Members or the Owners shall require the majority vote of the Members in Good Standing (both classes voting together), represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, at which a "Regular Quorum" or a "Special Quorum" is present. Written notice of a meeting must be given to all Members not less than ten (10) days nor more than thirty (30) days in advance of any such meeting and shall set forth the purpose(s) of such meeting. No action may be taken at a meeting on any matter that is not described in the applicable meeting notice as being on the agenda for such meeting. Notwithstanding anything herein to the contrary, to the extent permitted by applicable law and in the Association Documents from time to time, any action may be taken by written consent of the Members in lieu of formal meetings.
- (b) The quorum required for any action referred to in Section 4.05(b) hereof or Section 4.05(d) hereof or for the approval of any Common Services (a "Special Quorum") shall be as follows:

Members in Good Standing, represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast sixty percent (60%) of all of the votes of Members in Good Standing (both classes of Members taken together) shall constitute a Special Quorum. If the required Special Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Special Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Special Quorum at the preceding meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting. Further, if the reduced required Special Quorum is not present at such second (2nd) called meeting, the adjournment of the meeting shall be continued, and one (1) additional meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Special Quorum at such third (3rd) meeting; provided that such third (3rd) meeting must be held not later than forty-five (45) days after the first (1st) meeting.

- (c) The quorum required for any action other than the action referred to in Section 3.05(b) hereof (a "Regular Quorum") shall be as follows:

Members in Good Standing, represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast thirty percent (30%) of all of the votes of Members in Good Standing (both classes of Members taken together) shall constitute a Regular Quorum. If the required Regular Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Regular Quorum at such second (2nd) meeting being reduced to one-half (1/2) of the required Regular Quorum at the preceding meeting; provided, however, that such second (2nd) meeting must be held not later than thirty (30) days after the first (1st) meeting. Further, if the reduced required Regular Quorum is not present at such second (2nd) called meeting, the adjournment of the meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Regular Quorum at such third (3rd) meeting; provided that such third (3rd) meeting must be held not later than forty-five (45) days after the first (1st) meeting.

- (d) As an alternative to the procedure set forth in this Section, any action referred to and requiring a Special Quorum as provided in Section 3.05(b) hereof or a Regular Quorum as provided in Section 3.05(c) hereof may be taken without a meeting, upon obtaining the assent given in writing and signed by Members in Good Standing who hold more than (i) sixty percent (60%) of the outstanding votes eligible to be cast by Members in Good Standing (both classes of Members taken together) for actions under Section 3.05(b) hereof, or (ii) thirty percent (30%) of the outstanding votes eligible to be cast by Members in Good Standing (both classes of Members taken together) for actions under Section 3.05 (c) hereof.

- (e) Except as set forth in this Section, the notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in the Association Documents.



**ARTICLE IV**  
**ASSESSMENTS**

4.01 Covenants for Assessments. Each Owner, by acceptance of a deed or other conveyance or transfer of legal title to a Lot, whether or not it shall be so expressed in any such deed or other conveyance or transfer, shall be deemed to have covenanted and agreed to pay to the Association, or to an independent entity (or agency which may be designated by the Association to receive such monies, the following assessments (collectively, the "Assessments"):

- (a) Regular Assessments as provided in Section 4.02 hereof;
- (b) Special Purpose Assessments as provided in Section 4.03 hereof; and
- (c) Special Member Assessments as provided in Section 4.04 hereof.

All Assessments shall remain the property of the Owner making payment of such Assessments but shall be controlled and expended by the Association on behalf of the Owners only for the specified purposes provided or approved pursuant to this Declaration. No profit, gain or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the Owners. Upon termination of the Association (and not before), all Assessments held at that time by the Association shall be allocated and returned to the Owners that paid such Assessments. No Assessments shall be levied against the Streets or other Common Properties, or the Lots owned by Declarant; provided, however that Declarant shall pay the amounts, if any, expressly agreed herein to be paid by Declarant.

4.02 Regular Assessments. "Regular Assessments" (herein so called) shall be determined, assessed and expended on a calendar year basis, which shall be the fiscal year of the Association. Regular Assessments shall be used exclusively for the following purposes (collectively, the "Common Expenses"): (a) improving and maintaining the Common Properties subject to the limitations set forth in Section 6.01 hereof; (b) the payment of taxes and insurance (if any) in connection with the Common Properties and the Common Services; (c) developing and maintaining replacement and working capital reserves for the Association (including, without limitation, the Street Reserve Fund and the maintenance reserve fund as provided for in Section 9.06 hereof); (d) providing the Common Services; (e) paying any indemnity costs or costs of other functions of the Board or the Association pursuant to this Declaration; (f) meeting and carrying out all contractual obligations of the Association, including, without limitation, the Common Services and any Maintenance Agreement obligations; and (g) carrying out the duties of the Board and the Association as set forth in this Declaration. Each year while this Declaration is in force, the Board shall set the amount of the Regular Assessments to be levied for the next calendar year, taking into consideration (i) the Common Expenses for the then current year, expecting increases in such expenses during such next calendar year, (ii) a contingency amount (not exceeding ten percent (10%) of the anticipated expenditures for such next year), (iii) amounts needed for the Street Reserve Fund or any other reserve fund as determined by the Board if applicable, and (iv) the number of Lots subject to full and partial Assessments. The Regular Assessments for each calendar year shall be set by the Board on or about November 1 of the preceding year or as soon thereafter as such determination reasonably can be made by the Board. The "Per-Lot Regular Assessment Amount" (herein so called) shall then be determined by the Board such that the sum of the Per-Lot Regular Assessment Amount payable for each Lot subject to the full amount thereof plus the amount payable for each Lot which is subject to partial payment thereof equals the aggregate Regular Assessments required as set by the Board. The full amount of the Per-Lot Regular Assessment Amount shall be payable for each Lot which has been conveyed to an Owner who has, or intends to have, a single-family residence constructed thereon for such Owner's occupancy, whether or not such a residence is actually constructed or occupied by such Owner or occupied by a tenant (or other occupant) of such Owner. One-half (1/2) of the Per-Lot Regular Assessment Amount shall be payable for each Lot which has been conveyed by Declarant to a builder or contractor who owns such Lot prior to or during the construction of a single-family residence thereon for resale; provided, however, that the full amount of the Per-Lot Regular Assessment Amount shall be payable for each such Lot upon the earlier to occur of (i) the conveyance by such builder or contractor of such Lot to any third party, or (ii) nine (9) months from the date of the deed from Declarant conveying such Lot to said builder or contractor. Notwithstanding anything therein to the contrary, no Regular Assessments shall be payable for Lots owned by Declarant (whether now owned or hereafter acquired or reacquired), and such Regular Assessments shall commence and become payable (in whole or in part as provided above) immediately upon the conveyance (or reconveyance in the case of any Lot which is reacquired by Declarant) of any Lot by Declarant. Should any excess surplus (exclusive of amounts in any reserve fund) exist at the end of any calendar year, the Board may, but shall not be obligated to, reduce the amount required for the next year's Regular Assessments by an amount equal to such surplus.

4.03 Special Purpose Assessments. Subject to the provisions of Section 4.05(d) hereof, the Board, from time to time, may levy "Special Purpose Assessments" (herein so called) for the purpose of paying any capital improvements and other unanticipated expenses that normally would have been paid out of Regular Assessments but which were not included in that year's budget for Regular Assessments. Such Special Purpose Assessments shall be assessed on a per Lot basis in the same manner as the Regular Assessments are assessed as set forth in Section 4.02 hereof.

4.04 Special Member Assessments. The Board may levy a "Special Member Assessment" (herein so called) on any Member, to the extent any directly related insurance proceeds (if any) paid to the Association are not sufficient to pay all such costs, for the purpose of:

- (a) Paying the cost of any damage or loss requiring maintenance, repairs or replacement of Common Properties, which damage or loss has been determined by the Board to have been caused, either directly or indirectly, by the act(s) of such Member, or such Member's agent, employee, occupant or visitor; and/or
- (b) Paying the maintenance costs, construction delay damages and Violation Fines referenced in Section 7.20, Section 7.21, and Section 10.11 hereof or as otherwise set forth herein, respectively.

4.05 Special Provisions Regarding Assessments.

- (a) Until and unless otherwise determined by the Board, the maximum annual Regular Assessment shall be one thousand and no/100 Dollars (\$1,000) per Lot per year.
- (b) The Board may establish the maximum annual Regular Assessment for each Lot, provided that the maximum annual Regular Assessment may not be increased more than twenty-five percent (25.0%) above the maximum annual Regular Assessment for the previous year unless approved by the Members of the Association as provided in Section 3.05(b) hereof. Notwithstanding the foregoing, in the event that the Board determines that due to unusual circumstances the maximum annual Regular Assessment even as increased by twenty-five percent (25.0%) will be insufficient to enable the Association to pay the Common Expenses, then in such event, the Board shall have the right to increase the maximum annual Regular Assessment by the amount necessary to provide sufficient funds to cover the Common Expenses without the approval of the Members as provided herein; provided, however, the Board shall only be allowed to make one (1) such increase per calendar year without obtaining approval of the Members as provided in Section 3.05(b) hereof.
- (c) If any Assessment remains unpaid at the expiration of fifteen (15) calendar days from and after the due date established by the Board, a late charge, in an amount determined by the Board to offset administrative costs of the Association resulting from such delinquency, shall be assessed against the non-paying Owner for each month, or portion thereof, that any portion of an Assessment remains unpaid. A service charge of Twenty-five and No/100 Dollars (\$25.00) or such other amount established by the Board (but in no event exceeding the maximum lawful amount) shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and service charges may be adjusted, from time to time, by the Board, and shall in no event exceed the amounts permitted by applicable law.
- (d) Any Special Purpose Assessments for the purpose of paying the cost of the construction of a capital improvement or for the provision of Common Services shall require the affirmative approval of the Members as provided in Section 3.05(b) hereof.

4.06 Due Date of Assessments. The Regular Assessments provided for herein shall be payable annually within thirty (30) days after an invoice is delivered by the Association to an Owner; provided, however, the Board shall have the right to require payment of Regular Assessments at other intervals if the Board deems appropriate in the Board's sole and exclusive discretion (but with payment thereof not required any earlier than thirty (30) days after delivery of any such invoice). The due date of any Special Purpose Assessment or Special Member Assessment shall be fixed in the notice to the Owner or Owners providing for any such Assessment, but will not be sooner than thirty (30) days after such notice is delivered to the Owner or the Owners thereof. The initial Per-Lot Regular Assessment Amount as established by the Board shall be payable, in whole or in part (as applicable), simultaneously with the sale and conveyance of each Lot by Declarant, and such applicable amount shall be prorated over the remainder of the calendar year from the date of such conveyance.

4.07 Personal Obligation for Payment of Assessments. The Assessments provided for herein shall be the personal obligation of the Owner or Owners of the Lot with respect to which such Assessment is made. The covenants for the payment of Assessments as provided in this Declaration touches and concerns each Lot, are covenants running with the land and specifically bind the Owners and their heirs, successors, devisees, personal representatives and assigns. Except for Declarant as expressly provided herein, no Owner, for any reason,

may exempt itself from liability for Assessments. In the event that any Assessment (or any part thereof) is not paid when due, the Owner or Owners of such Lot shall be obligated to pay interest on any such unpaid Assessment from such date at the Default Rate of Interest together with the charges made as authorized in Section 4.05(c) hereof and all costs and expenses of collection thereof, including, but not limited to, reasonable attorneys' fees. The Board shall have the right to reject any partial payment of any Assessment and demand full payment thereof, or the Board may, in the Board's sole and exclusive discretion, elect to accept any such partial payment on account only, without in so doing waiving any rights established hereunder with respect to any remaining balance due. The obligation of any Owner to pay an Assessment with respect to a Lot made for any period of time that an Owner owns the Lot shall remain such Owner's personal obligation (notwithstanding any future sale or conveyance of such Owner's Lot) and shall also pass to the purchaser(s) of such Lot. However, any lien against a Lot for any unpaid Assessments shall be unaffected by any sale of such Lot and shall continue in full force and effect. In the event of a sale of a Lot, it shall be the obligation of the then Owner of such Lot to disclose to any buyer, assignee, title company designated to handle such transaction, financing entity or any other party to such sale any unpaid Assessments, such notice to be given in writing to all parties to the intended transaction at least fifteen (15) days before the date at which such transaction is to be consummated. A copy of any such notice shall be sent to the Association at the same time. A former Owner shall not be liable for Assessments due with respect to a Lot for periods after such Person no longer is the Owner of such Lot.

#### 4.08 Assessment Lien and Foreclosure.

**THE OBLIGATION TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN THIS ARTICLE, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT RATE OF INTEREST, THE CHARGES MADE AS AUTHORIZED IN SECTION 4.05(c) HEREOF, ALL VIOLATION FINES AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, ARE SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "ASSESSMENT LIEN") AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES.**

The aforesaid continuing contractual Assessment Lien shall attach to the Property and all of the Lots as of the date of the recording of this Declaration in the Real Property Records of Tarrant County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 4.11 hereof. Such Assessment Lien shall not encumber or attach to the Common Properties, including, without limitation, the Streets as shown on the Plat. The Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Board. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 4.11 hereof, all Lots are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this Section. To evidence any unpaid Assessments, the Association may prepare a notice of unpaid Assessments (the "Notice of Unpaid Assessments") setting forth the amount of the unpaid indebtedness, the name of the Owner of and describing the affected Lot. Such notice shall be signed by one (1) of the officers of the Association and may, at the Board's sole and exclusive discretion, be recorded in the Real Property Records of Tarrant County, Texas. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid.

**THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS EITHER BY JUDICIAL FORECLOSURE OR BY NONJUDICIAL FORECLOSURE THROUGH A PUBLIC SALE IN LIKE MANNER AS A MORTGAGE ON REAL PROPERTY IN ACCORDANCE WITH SECTION 51.002 OF THE TEXAS PROPERTY CODE, AS SUCH MAY BE REVISED, AMENDED, SUPPLEMENTED OR REPLACED FROM TIME TO TIME.**

In addition, the Association may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or non-judicial, or in any suit or other action against, or pertaining to unpaid assessments, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the right and power to buy the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

4.09 Certificate. Upon request by an Owner, the Association shall furnish a certificate setting forth the unpaid Assessments owed by an Owner. Upon the written request of any Mortgagee holding a lien on a Lot, the Association shall report to any said Mortgagee any Assessments which are delinquent and unpaid at the time of the report.

4.10 Rights of the City. Unless otherwise approved by Owners owning at least sixty-six (66) Lots plus Declarant (for so long as Declarant owns at least one (1) Lot), the Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Properties. However, in the event that:

- (a) The Association dissolves and the Common Properties shall be either (i) dedicated to and accepted by an appropriate municipal corporation, public agency, authority or utility to be devoted to purposes as nearly as practicable to the same as those to which such Common Properties were required to be devoted by the Association, or (ii) conveyed to another organization or entity which assumes all obligations imposed hereunder upon the Association to maintain said Common Properties; or
- (b) The Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which the Association is obligated to maintain hereunder;

then, in either such event, the City shall have the right, but not the obligation, thereafter to assume the duty of performing the Association's maintenance obligations of all such Common Properties at any time after such dissolution, upon giving written notice to the Owners, or at any time after the expiration of sixty (60) days after receipt by the Association or the Association's successor or assign of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied. Upon assuming such maintenance obligations, the City may collect, when the same become due, the Assessments levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining or caring for the Common Properties; and, if necessary, the City may enforce the payment of delinquent Assessments in the manner set forth herein. In the alternative, upon assuming such maintenance obligations, the City may levy an Assessment upon each Lot on a pro rata basis for the cost of such maintenance to be provided by the Association as set forth in this Declaration, which Assessment shall constitute an Assessment Lien upon the Lot against which each Assessment is made. During any period that the City assumes the obligation to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance and care. The right and authority of the City to maintain the Common Properties shall cease and terminate when the Association, its successors or assigns, shall present to the City reasonable evidence of the Association's willingness and ability to resume maintenance of the Common Properties. In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City, its agents, representatives and employees, shall have the right of access, ingress and egress to and over the Common Properties for the purposes of maintaining, improving and preserving the same, and in no event, and under no circumstances, shall the City be liable to the Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or omissions relating in any manner to maintaining, improving and preserving the Common Properties. The provisions of this Section shall not be amended or deleted from this Declaration without the written consent of the City.

4.11 Subordination of the Assessment Lien. The Assessment Lien provided for herein on a Lot shall be subordinate and inferior to the lien or liens granted by the Owner of such Lot to secure the repayment of a loan made for the purpose of providing purchase money funds for such Lot, funds used at any time to install or construct improvements on such Lot or funds used to pay ad valorem taxes on such Lot; provided, however, that such subordination shall apply only to Assessment Liens which have become due and payable prior to the foreclosure sale, whether public or private, of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust lien. Such foreclosure sale shall not relieve such Lots from any Assessment Lien for Assessments thereafter becoming due.

## **ARTICLE V**

### **PROPERTY RIGHTS IN THE COMMON PROPERTIES**

5.01 Title to the Common Properties. The Association will hold record fee simple title or enforceable easement rights, as applicable, in and to all Common Properties, and all portions of the Property which are not within any of the Lots as shown on the Plat, all of which have been or will be dedicated to the Association as shown on, and pursuant to, the Plat, subject to the easements set forth in this Article, and in Article IX hereof. Declarant or the Association shall have the right to execute any open space declarations applicable to the Common Properties owned by, or dedicated to, the Association which may be permitted by law in order to reduce property taxes.

5.02 Use of the Streets and Entry Areas. The Streets are public streets, dedicated to and owned by the City; however, as provided in Article II hereof, the Association and the City may mutually determine at a later date that said Streets and Entry Areas shall be vacated as public streets and ownership of such Streets and Entry Areas shall be in the Association. In such event, each Owner and the occupants of the residence on such Owner's Lot shall have the private right and easement, and may authorize such Owner's guests and invitees, to use the Streets for the sole and exclusive purpose of providing ingress and egress from such Owner's Lot to other Lots and to other public roads or private roads. Other permitted uses of the Streets are set forth in Article II hereof. The portions of the Streets and Common Properties comprising the Entry Areas located at or near the entrances to the Subdivision shall be used for installation and

construction of one (1) or more guardhouses or gatehouses and the controlled access System as the Board may elect in the Board's sole and exclusive discretion, subject to the provisions hereof regarding same, if Streets and Entry Areas are conveyed to the Association.

5.03 Other Easements. Declarant and the Association shall have the right and easement to use the surface (and below the surface) of the Easement Areas or other Common Properties for the purposes set forth on the Plat. In addition, the Association shall have an easement on each Lot for the purpose of erecting street lights or street signs, as well as for access to, and ingress and egress from, all Common Properties for maintenance and other necessary or appropriate purposes. Any such entry by Declarant or the Association upon a Lot shall be made with as much minimum inconvenience to the affected Owner as practical.

5.04 Obligation of Declarant. Declarant has installed and constructed, or caused to be installed and constructed, or will install and construct, the Streets located at the Entry Areas and various landscaping and signage and related facilities as determined by Declarant in such condition as required by the City in order to obtain approval of the Plat. Declarant shall have no further obligation whatsoever to construct any improvements on the Property.

## **ARTICLE VI**

### **GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

6.01 Powers and Duties. The affairs of the Association shall be conducted by the Board. The Board shall be selected in accordance with the Association Documents. The Board, for the benefit of the Common Properties and the Owners, shall provide, and shall pay for (if applicable), from Assessments, the following, if and to the extent such have been or are hereafter provided by or contracted for by the Association or the Board, as the Board determines in the Board's sole and exclusive discretion:

- (a) Care, maintenance, repair and preservation of the Common Properties, including, without limitation, the obligations pursuant to any Maintenance Agreement, and the furnishing and upkeep of any desired personal property for use in the Common Properties; provided, however, if the public Streets become private streets as provided in Article II hereof, the Association shall maintain the Streets in a manner deemed appropriate in the sole and exclusive judgment of the Board;
- (b) The Common Services;
- (c) Any private trash and garbage collection service and security arrangements;
- (d) Taxes, insurance and utilities which pertain to the Common Properties;
- (e) The services of a Person or Persons to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Association or by a manager designated by the Board;
- (f) Legal, accounting and other professional services;
- (g) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alteration, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in the Board's sole and exclusive opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration; and
- (h) The collection (as a part of the Regular Assessments) and payment of any assessments owed by an Owner or the Association under any other recorded deed restrictions, if any.

The Board shall have the following additional exclusive rights, powers and duties:

- (i) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;
- (j) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

- (k) To perform any of the Board's duties under this Declaration by contracting with third parties, to enter into other contracts, to maintain one (1) or more bank accounts and, generally, to have all the powers necessary or incidental to the operation, functions and management of the Association;
- (l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;
- (m) To make reasonable rules and regulations for the operation and use of the Common Properties and the Common Services and to amend them from time to time;
- (n) To make available to each Owner, within ninety (90) days after the end of the year, an annual report of the Association commencing at the end of the year 2005;
- (o) To adjust the amount, collection and use of any insurance proceeds;
- (p) To enforce the provisions of this Declaration and any rules made hereunder and, in the sole and exclusive discretion of the Board, to enjoin and seek damages from any Owner for violation of any such provisions or rules;
- (q) To appoint members of the Architectural Control Committee as described in, and subject to the provisions of, Article VIII hereof;
- (r) To own fee simple title, or an easement interest, in the Common Properties; and
- (s) To perform such other duties and functions as are necessary to carry out the rights and obligations of the Board and the Association under this Declaration or applicable laws of the State of Texas.

**6.02 Insurance.** The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenances thereto and the Common Services for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the Common Properties and for services similar to the Common Services. Such insurance may include, but need not be limited to, the following:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier;
- (b) Public liability and property damage insurance on a broad form basis;
- (c) Fidelity bond for all officers and employees of the Association having control over the receipt and disbursement of funds; and
- (d) Officers', directors' and Architectural Control Committee members' liability insurance.

The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association remaining (after satisfactory completion of repair and replacement) shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties. If the insurance proceeds are insufficient to repair or replace any such loss or damage, the Association may levy Special Purpose Assessment(s) or Special Member Assessment(s) (if applicable) to cover any such deficiency.

**6.03 Affiliated Contracts.** The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner, including, without limitation, Declarant, for the performance of services which the Association is obligated or authorized to obtain, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Board may deem advisable in the Board's sole and exclusive discretion and in the best interest of the Association provided that the level of service received is consistent with that available from third parties.

6.04 Liability Limitations. Neither Declarant or any Member, director, officer or representative of the Association, the Board or the Architectural Control Committee shall be personally liable for the debts, obligations or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association Documents. Declarant and such directors, officers and Architectural Control Committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association, as a Common Expense of the Association, shall indemnify and hold Declarant, such directors, officers and members of the Architectural Control Committee harmless from any and all expenses, loss or liability to others on account of any such contract or commitment (to the extent not covered by insurance proceeds). In addition, each director, each officer of the Association and each member of the Architectural Control Committee shall be indemnified and held harmless by the Association, as a Common Expense of the Association, from any expense, loss or liability to others (to the extent not covered by insurance proceeds) by reasons of having served as such director, officer or Architectural Control Committee member and against all expenses, losses and liabilities, including, but not limited to, court costs and reasonable attorneys' fees, incurred by or imposed upon such director, officer or Architectural Control Committee member in connection with any proceeding to which such Person may be a party or have become involved by reason of being such director, officer or Architectural Control Committee member at the time any such expenses, losses or liabilities are incurred subject to any provisions regarding indemnity contained in the Association Documents, except in cases wherein the expenses, losses and liabilities arise from a proceeding in which such director, officer or Architectural Control Committee member is adjudicated guilty of willful misfeasance or malfeasance, misconduct or bad faith in the performance of such Person's duties or intentional wrongful acts or any act expressly specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable; provided, however, this indemnity does cover liabilities resulting from such director's, officer's or Architectural Control Committee member's negligence. Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer or Architectural Control Committee member, or former director, officer or Architectural Control Committee member, may be entitled. The Association shall have the right to purchase and maintain, as a Common Expense, directors', officers', and Architectural Control Committee members' insurance on behalf of any Person who is or was a director or officer of the Association or an Architectural Control Committee member against any liability asserted against any such Person and incurred by any such Person in such capacity, or arising out of such Person's status as such.

**ARTICLE VII**  
**USE OF THE PROPERTY - PROTECTIVE COVENANTS**

7.01 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time.

**IN SOME INSTANCES, THE MANDATORY REQUIREMENTS OF ANY GOVERNMENTAL ENTITY HAVING VALID JURISDICTION OVER THE SUBJECT MATTER OF THIS DECLARATION (THE "GOVERNMENTAL REQUIREMENTS") MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN VIOLATION OF AN APPLICABLE GOVERNMENTAL REQUIREMENT, IN WHICH EVENT SUCH GOVERNMENTAL REQUIREMENT SHALL APPLY. COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NONCOMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION, BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.**

All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided. The provisions of this Article set forth certain requirements that, in addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property.

7.02 Residential Use. All Lots shall be used and occupied for single-family residential purposes only. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than a private single-family detached residence. No building or structure on any Lot shall exceed two and one-half (2½) stories in height.

7.03 Streets and Common Properties. The Streets and the other Common Properties shall be used only for the purposes set forth herein, including the purposes set forth in Article II hereof and Article V hereof.

7.04 Resubdivision/Zoning Changes. No Lot shall be resubdivided; provided, however, that Declarant shall have, and reserves the right, at any time, and from time to time, upon the consent of the City, and with the joinder and consent of the directly affected Lot Owners, to file a replat of the Plat to effect a resubdivision or reconfiguration of any Lots in the Property then owned by Declarant and the consenting Lot Owners, so long as such replat results in each resubdivided Lot containing not less than the minimum Lot size within the Subdivision prior to such replat. Owners of Lots not being replatted shall not unreasonably withhold or delay their joinder in or consent to such replat or amendments to the Plat as may be required by the City. The right to replat set forth in this Section shall be exercisable only by Declarant. No Owner shall initiate or support any proposed zoning change affecting the Property or any portion thereof without first obtaining the prior written consent of Declarant (for as long as Declarant or Declarant's affiliates own at least one (1) Lot).

7.05 Combining Lots. Any Person owning two (2) or more adjoining Lots, after first obtaining Declarant's prior written consent, may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of the City. In the event of any such consolidation, the consolidated building lot shall continue to be treated as two (2) or more Lots for purposes of applying the provisions of this Declaration. Combining of portions of Lots into a single building lot is prohibited.

7.06 Minimum Floor Space. Each dwelling constructed on any Lot shall contain a minimum of three thousand five hundred (3,500) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

7.07 Building Materials. The exterior walls of each building constructed or placed on a Lot shall be at least eighty percent (80%) brick, brick veneer, stone, stone veneer or other material that is approved by the City and approved in writing by the Architectural Control Committee. The exterior portion of any fireplace chimney shall be one hundred percent (100%) brick, stone or other material that is approved by the City and approved in writing by the Architectural Control Committee. No brick, stone or other material used on the exterior of any building, outside walls, fence, walkway or other improvement or structure on any Lot shall be stained or painted without the prior written approval of the Architectural Control Committee.

7.08 Driveways/Sidewalks. Each Lot must be accessible to an adjoining Street or alley by a concrete driveway unless other materials are approved in writing by the Architectural Control Committee. Concrete sidewalks must be installed on each Lot by the builder of each home on said lot conforming with the requirements of the City. All sidewalks shall be constructed of broom finish concrete. Washed aggregate finish sidewalks shall not be permitted.

7.09 Garages. Each single-family residential dwelling erected on any Lot shall provide garage space for a minimum of two (2) automobiles. Each garage shall open only to the rear or side of the Lot so as not to directly face a street unless otherwise approved in writing by the Architectural Control Committee. Garage doors facing the street shall be constructed of wood or other decorative material, or as otherwise approved by the Architectural Control Committee. Garages with the vehicular entry within thirty (30) feet of the front building setback shall have a masonry wing wall and mechanized entry gate. Said wing wall will extend along the front building line from the garage entry on a line that is perpendicular to the limits of the structure. Any garage entry constructed adjacent to open space or common area shall be required to provide screening as necessary in the discretion of the Architectural Control Committee.

7.10 Drainage.

- (a) All Lots shall be graded so that no storm water drainage shall flow onto other Lots except as may be shown on the Plat.
- (b) To the extent Declarant installs special storm water drainage, to the extent possible, drainage from roof downspout and swimming pools shall be directed towards and shall tie into those special drainage facilities in a manner approved in writing by the Architectural Control Committee.



- (a) Neither Declarant nor Declarant's successors or assigns shall be liable for any loss of, or damage done to, any shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot, the Streets or the Common Properties caused by any water levels, rising waters or drainage waters.

7.11 Reserved.

7.12 Roofs. The use of various roofing materials within the Property shall be permitted, including composition roofs rated for a minimum thirty (30) year life; provided, however, no roofing material shall be installed without first obtaining the Architectural Control Committee's prior written approval thereof. The roof pitch of any structure shall be a minimum of eight (8) feet by twelve (12) feet, unless otherwise approved in writing by the Architectural Control Committee.

7.13 Exterior Surfaces. All siding must be painted or stained in a compatible color approved by the Architectural Control Committee.

7.14 Building Lines/Setbacks: Retaining Walls.

- (a) All residences erected on any Lot shall face the Street adjacent to the Lot as shown on the Plat or, with respect to corner or flag Lots, as required in writing by the Architectural Control Committee. No portion of any such dwelling or residence shall be nearer to the front property line of said Lot than as designated on the Plat.
- (b) Subject to the further restrictions set forth in Section 7.14(c) hereof, no structure or improvement of any kind (except for fences, as provided in Section 7.15 hereof) shall be nearer to the side property line or the rear property line of any Lot than as specified by the City for side and rear yard setbacks applicable to the Property. No structure or improvements of any kind whatsoever shall be located within any floodway maintenance and access easement as shown on the Plat.
- (c) To the extent Declarant has installed any retaining walls on any Lot or along any Lot line, such retaining walls shall not be part of the Common Properties, and each Owner of an affected Lot shall be responsible for the maintenance and repair of the portion of any retaining wall adjacent to, or located on, such Owner's Lot. Retaining walls constructed in Tuscany Keller shall be comprised of stack "Millsap Stone." No additional retaining walls shall be installed on any Lot unless approved in writing by the Architectural Control Committee. No improvements other than fencing as provided in Section 7.15 hereof, landscaping, swimming pools, an underground sprinkler system, or other improvements approved by the Architectural Control Committee, shall be installed within ten (10) feet of Pond and Pedestrian Easement Perimeter Lots as described in Article I(t). Notwithstanding the above, in no event shall any residence or wooden fence be constructed or erected on any Pond and Pedestrian Easement Perimeter Lots within less than the minimum wooden fence setback distance as set forth in Section 7.15(e) hereof.

7.15 Fences.

- (a) No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any Street or public street than the minimum building setback line indicated on the applicable Plat, unless allowed by the City and approved in writing by the Architectural Control Committee. No fence, wall or hedge shall exceed eight (8) feet in height unless otherwise specifically required by the City and approved in writing by the Architectural Control Committee.
- (b) No chain link fences or other wire type fences shall be erected on any Lot so as to be visible from any Street, any public street, the ground level on any adjoining Lot or from the Common Properties.
- (c) Except as provided in Section 7.15 (e) hereof, unless otherwise approved in writing by the Architectural Control Committee, all fencing shall: (i) be of wood material and present a solid, board to board, facing (i.e., picket type fencing or other staggered spacing type fencing is not permitted); (ii) have a minimum height of six (6) feet and a maximum height of eight (8) feet; (iii) not have any steel poles or posts visible from the ground level of any Street, any public street or adjoining Lot (however, steel poles may be used provided they meet the above requirements); (iv) have slats measuring between four (4) inches and six (6) inches wide which are installed vertically only (not horizontally or diagonally); (v) have an even flat top; and (vi) not be painted or stained on any surface which is visible from the ground level of any Street, public street or adjoining Lot; provided, however, a clear stain that does not add a color to the wood may be used.

- (d) All fences which are adjacent to any of the Streets or which extend from the outer perimeter of a dwelling to the side or rear property lines abutting a Street shall be six (6) feet, must be approved in writing by the Architectural Control Committee and be built with brick (which must match the brick used in construction of the residence), wrought iron, or wood (which must have brick pillars separating the wood sections and which such brick pillars must be constructed of brick identical to that used on the residence and must be a minimum of eight (8) feet apart and a maximum of ten (10) feet apart).
- (e) Any and all fencing located within ten (10) feet of the rear property line of any Pond and Pedestrian Easement Perimeter Lots shall be six (6) feet in height and shall be constructed of wrought iron of a design and color approved in writing by the Architectural Control Committee. Declarant shall not be responsible for the construction and installation of such fences.
- (f) Upon submission of a written request for same, the Architectural Control Committee, from time to time and at its sole and exclusive discretion, may permit the construction of fences or walls which are in variance with the provisions of this Section where, in the sole and exclusive opinion of the Architectural Control Committee, taking into account the view impact on the adjacent Lot or any other Lot directly affected thereby, the fence or wall is an integral part of the architectural style or design of the home.

7.16 Signs. No sign or signs shall be displayed to the Streets or otherwise to the public view on any Lot, except that:

- (a) any builder, during the applicable initial construction and sales period, may utilize one (1) professional sign (of not more than nine (9) square feet in size) per Lot for advertising and sales purposes, provided that such sign first shall have been approved in writing by the Architectural Control Committee;
- (b) a “for sale” or “for rent” sign (of not more than nine (9) square feet in size) may be utilized by the Owner of a Lot for the applicable sale or rent situation, provided that such sign first shall have been approved in writing by the Architectural Control Committee;
- (c) development related signs owned or erected by Declarant shall be permitted; and
- (d) signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted, (ii) limited to two (2) in number per Lot [one (1) in the front yard and one (1) in the back yard] , and (iii) of a size not in excess of two (2) square feet in size.

7.17 Utilities. Each residence situated on a Lot shall be connected to the public water and sanitary sewer lines. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building construction. The use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except on portable gas grills) is prohibited. Except as to street lighting (if any) installed by Declarant, all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). All utility meters, equipment, air-conditioning compressors and similar items must be visually screened from view from any street or Common Properties by solid masonry of the type used on the dwelling, wood fencing in compliance with Section 7.15 hereof or landscape screening. Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the Architectural Control Committee, and all improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separations from pad-mounted transformers.

7.18 Temporary Structures. Except as provided in Section 7.31 hereof, no temporary structures of any kind shall be erected or placed upon any Lot without the prior written consent of the Architectural Control Committee.

7.19 Vehicles. Any automobile, truck, motorcycle, boat, boat trailer, mobile home, motor home, recreational vehicle, camper, motorized vehicle or trailer shall be stored or placed in such a manner that the vehicle is not visible from any Street or public street or from ground level view from an adjoining Lot. This is not intended to prohibit the parking of authorized vehicles on a driveway behind a dwelling, so long as any such authorized vehicles are not visible from any Street or public street. Trucks with tonnage in excess of three quarters (3/4) ton shall not be permitted to park overnight on the Streets, driveways or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or stored within the Property at any time. On-Street parking is restricted to deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted from time to time by the Board.

7.20 Garbage/Weeds. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in City-approved containers. All garbage containers shall be placed where designated by the City on the day of collection. If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth exceeding eight (8) inches in height, Declarant or the Board shall have the authority and right to go onto such Lot, or direct a third (3rd) party service to go onto such Lot, for the purpose of mowing and cleaning such Lot and shall have the authority and right to assess and collect from the Owner of such Lot a sum not to exceed Five Hundred and No/100 Dollars (\$500.00) for any such mowing or cleaning. Any such Assessments shall be Special Member Assessments.

7.21 Construction Completion Time. If a residence is not completed on any Lot on or before eighteen (18) months from the date of the issuance of a building permit with respect to such Lot, the Board shall have the authority and the right to assess and collect from the Owner of such Lot, as liquidated damages, the sum of Two Hundred and No/100 Dollars (\$200.00) per day commencing the first (1st) day thereafter (such being a reasonable estimate of the Association's actual damages resulting from any such delays, which actual damages would be difficult to ascertain). Any such Assessments shall be Special Member Assessments.

7.22 Offensive Activities; Pets. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance within the Property or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets are permitted, provided that they are not kept, bred or maintained for commercial purposes.

7.23 Antennas, Aerials and Satellite Dishes. All television antennas and other antennas and aerials shall be located inside the attic of the residence constructed on the Lot. Satellite dishes shall be permitted only if they are not visible from any Street or public street or the ground level of an adjoining Lot and do not extend above the height of the fence. Towers of any kind are not permitted.

7.24 Landscaping and Retaining Walls.

- (a) Weather permitting, landscaping of a Lot must be completed within sixty (60) days after the date on which the residence thereto is ninety-five percent (95%) complete. The landscaping plan must be approved in writing by the Architectural Control Committee along with building plans or prior to any planting. Trees installed on Lots shall be no smaller than three (3) inches in caliper.
- (b) Each Owner shall install an underground sprinkler system in all yards as the yards are landscaped.
- (c) Retaining walls may be installed to achieve even grades for pools, driveways or house foundations or to prevent storm water drainage to flow onto other Lots as required by Section 7.10(a) hereof. Retaining walls constructed in Tuscany Keller shall be comprised of stack "Millsap Stone" or as otherwise approved by the Architectural Control Committee. No railroad ties or landscape timbers shall be allowed.

7.25 Exterior Lighting. Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the Lot on which same is located shall immediately remove any such lighting or shield the same in such a way that it is no longer objectionable to the Architectural Control Committee.

7.26 Tennis Courts. Tennis courts shall not be permitted upon any Lot without the prior written approval of the Architectural Control Committee.

7.27 Gazebos, Greenhouses and Storage Sheds. Gazebos, pool pavilions, trellises, greenhouses, children's playhouses, treehouses, storage sheds or other similar structures may not be erected or placed on a Lot without the prior written approval of the Architectural Control Committee.

7.28 Pools and Pool Equipment. No above-ground pools are permitted. All pool service equipment shall be fenced and located in either (a) a side yard between the front and rear boundaries of the dwelling, or (b) in the rear yard.

7.29 Mailboxes. Mailboxes shall be installed according to the specifications provided by the Architectural Control Committee to the builders. Mailbox structures shall be constructed of architectural wrought iron in tandem and shared by the adjacent lot. It shall be the

responsibility of the builder obtaining a building permit for construction of a home on the first of the two Lots sharing a mailbox structure to construct the mailbox structure for the two Lots.

7.30 Exterior Maintenance. Each Owner shall maintain the exterior appearance of the improvements on such Owner's Lot, shall keep all landscaping and sprinkler systems on such Owner's Lot in a neat, orderly and well-maintained condition, and shall keep the sidewalk on such Owner's Lot in good condition and repair. The Board shall have no duty to police the Property for violations of this Section. However, if the Board, in the exercise of the Board's reasonable judgment, determines that such exterior maintenance does not meet such standards, then the Owner of such Lot shall be subject to the imposition of a Violation Fine in accordance with Section 10.11 of this Declaration.

7.31 Certain Declarant Uses. Notwithstanding anything herein to the contrary, Declarant may conduct Declarant's sales and marketing program for the Property from any permanent or temporary sales buildings or trailers, and Declarant may conduct improvement work and activities on portions of the Property owned by Declarant or the Association and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such improvement work, including, but not limited to, the provision of temporary buildings (including, without limitation, trailers), temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by Declarant or the Association as Declarant deems appropriate.

7.32 Construction Standards. Any builder constructing improvements on any Lot may conduct such builder's construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction of any such improvements. All construction activities, temporary structures, storage of materials and equipment, all construction-related parking and temporary security fences shall be confined entirely on such Lot. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and such Owner's contractors must maintain an attractive, clean, nuisance-free environment during the period of construction. Each Owner of a Lot on which improvements are being constructed shall keep all Streets reasonably cleared of mud and dirt left by construction vehicles for each Lot. Once commenced, all construction on a Lot shall be continued with due diligence and good faith until completion.

7.33 Repairs, Replacements and Modifications. The provisions of this Article shall apply to any and all repairs, replacements or modifications of any improvements placed upon any Lot and shall not be deemed or construed as being limited to initial or new construction.

## ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

8.01 Architectural Control Committee. Declarant shall appoint an initial Architectural Control Committee (herein so called) to consist of not fewer than three (3) persons. Declarant shall have the sole and exclusive right to appoint, remove and replace members of the Architectural Control Committee for so long as Declarant or Declarant's affiliates own at least one (1) Lot. Thereafter, the Architectural Control Committee members shall be appointed, removed and replaced by the Board. Either Declarant or the Board shall have the right, but not the obligation, at any time and from time to time, to establish a second (2nd) and separate review committee that, for administrative convenience, shall perform the functions of the Architectural Control Committee set forth in this Declaration in connection with the review of Plans submitted to the Architectural Control Committee by Owners of Lots on which a residence already has been constructed for construction or installation of additional improvements on such Lots. ~~For so long as Declarant or Declarant's affiliates own at least one (1) Lot, Declarant shall have the sole and exclusive right to establish, abolish and appoint, remove and replace members of such second (2nd) review committee. Thereafter, such functions shall be performed by the Board. At any time such second (2nd) review committee is functioning, it shall be bound by and shall have the same rights and restrictions as are applicable to the Architectural Control Committee as set forth in this Declaration.~~

8.02 Purpose of the Architectural Control Committee. A function of the Architectural Control Committee is to review and approve or disapprove Plans for improvements proposed to be constructed or modified on Lots and otherwise perform the duties set forth in this Declaration.

**NO IMPROVEMENTS SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED OR PERMITTED TO REMAIN ON A LOT UNTIL PLANS, IN SUCH FORM AND DETAIL AS THE ARCHITECTURAL**

**CONTROL COMMITTEE MAY DEEM NECESSARY, SHALL HAVE BEEN SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE AND APPROVED BY IT IN WRITING.**

The vote of a majority of the members of the Architectural Control Committee shall be considered as the act of the Architectural Control Committee. The process of reviewing and approving Plans and specifications is one which of necessity requires that the Architectural Control Committee is called upon from time to time to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration. The Architectural Control Committee is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration in such manner and with such results as the Architectural Control Committee, in its sole and exclusive discretion, may deem appropriate, and in the absence of final adjudication by a court of competent jurisdiction that the Architectural Control Committee has abused its discretion, such action by the Architectural Control Committee shall be final and conclusive. Unless expressly stated otherwise herein, the Architectural Control Committee shall have the right to grant variances or waivers from the requirements of this Declaration as it, in its sole and exclusive judgment, deems appropriate. The Architectural Control Committee shall have the sole and exclusive discretion to determine whether Plans submitted to it for approval are acceptable, and the Architectural Control Committee, Declarant or the Association shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to Plans or other plans that have not been approved in writing by the Architectural Control Committee.

**8.03 Plans.**

- (a) The Architectural Control Committee shall have the right to disapprove any submitted Plans that are not in compliance with this Declaration, if they are incomplete or if the Architectural Control Committee determines that such Plans are deficient for any reason. The Architectural Control Committee may base its approval or disapproval on, among other things:
  - (i) architectural character all proposed improvements, taking into consideration the aesthetic quality of any structures with respect to height, form, siding, exterior materials and roofing materials (with regard to type, scale, texture, color and durability);
  - (ii) harmony of external design with improvements on other Lots;
  - (iii) relation of topography, grade and finish ground elevations to that of adjoining Lots and drainage functions;
  - (iv) screening of mechanical and other installations;
  - (v) extent and quality of landscaped areas; and
  - (vi) compliance with the purpose and general plan, intent and provisions of this Declaration.
- (b) The Architectural Control Committee shall be available on a reasonable basis to meet with an Owner or such Owner's representatives to discuss and answer questions concerning proposed improvements and their compliance with this Declaration.
- (c) An Owner desiring to construct or install any improvements on such Owner's Lot must submit to the Architectural Control Committee Plans, in duplicate, for such improvements that contain sufficient detail and information to show the following (the "Plans"):
  - (i) general plan for the residence showing exterior shape, elevations, height, exterior materials, window locations, roofing and colors of all exterior surfaces;
  - (ii) fencing and driveways;
  - (iii) swimming pool(s);
  - (iv) landscaping;
  - (v) cover matters specifically requiring Architectural Control Committee approval as provided in this Declaration; and

(vi) such other information as may be required by the Architectural Control Committee.

- (d) Approval of the Plans shall be based upon a determination by the Architectural Control Committee as to whether or not in its judgment, such Plans adequately meet objectives established for the Subdivision with regard to aesthetic quality as well as meeting the requirements created by this Declaration. Approval of any Plans with regard to certain improvements shall not be deemed a waiver of the Architectural Control Committee's right, in its sole and exclusive discretion, to disapprove similar Plans, or any of the features or elements included therein, for any other improvements or to refrain from granting similar variances.
- (e) If any submission of Plans is not complete or does not include all data required by this Declaration, the Architectural Control Committee, within thirty (30) days after such submission, shall notify the Owner of such deficiencies, and such Plans shall not be considered to have been submitted until such deficiencies have been corrected. At such time as the Plans meet the approval of the Architectural Control Committee, one (1) set of Plans will be retained by the Architectural Control Committee and the other set of Plans will be marked "Approved" and returned to the Owner or such Owner's designated representative, accompanied by a statement of complete approval or approval based on certain conditions. If the Plans are found not to be in compliance with this Declaration, one (1) set of such Plans shall be returned marked "Disapproved", accompanied by a statement of the items found not to comply with this Declaration or not to be acceptable to the Architectural Control Committee. Any modification or change to the approved Plans must again be submitted to the Architectural Control Committee for its inspection, review and approval. Should the Architectural Control Committee fail to approve or disapprove any Plans, properly presented by an Owner as provided above, within thirty (30) days after submittal thereof to the Architectural Control Committee in a form and fully complete as required by the Architectural Control Committee, it shall be presumed that the Architectural Control Committee has approved such properly submitted Plans, unless prior to the end of the thirty (30) day period, the Architectural Control Committee shall have notified the Owner submitting such Plans in writing that an additional time period, not to exceed fifteen (15) days, is needed for further inspection and review, after which such additional period it shall be presumed that approval has been given absent specific disapproval in writing having been given by the Architectural Control Committee during such additional review period.
- (f) An Owner may prepare detailed plans and specifications that do not vary from or modify the Plans that have been approved by the Architectural Control Committee. Improvements may be constructed or installed on a Lot only in conformance with such approved Plans. If work is not commenced within six (6) months from the date of Architectural Control Committee approval of the Plans, then the approval given by the Architectural Control Committee pursuant to this Article shall be deemed revoked by the Architectural Control Committee, unless the Architectural Control Committee extends in writing the time for commencing such work.
- (g) Upon submission of a written narrative request for same, the Architectural Control Committee may, from time to time, in its sole and exclusive discretion, permit Owners to construct, erect or install improvements which are in variance from this Declaration. In any case, however, such variances shall be in basic conformity with and shall blend effectively with, the general architectural style and design of the Subdivision. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests. The grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce this Declaration against any other Owner or against the same Owner for any other matter. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Architectural Control Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. The failure of the Architectural Control Committee to act on a variance request within any particular period of time shall not constitute the granting or approval of any such variance request.
- (h) The Architectural Control Committee may from time to time publish, promulgate and amend architectural standards bulletins.

8.04 Inspections. The Architectural Control Committee, or its designees, shall have the right during reasonable business hours to enter upon and inspect any Lot or improvements then under construction to determine whether or not the Plans therefor have been approved by the Architectural Control Committee. If the Architectural Control Committee shall determine that such Plans have not been approved or that the Plans which have been so approved are not being substantially complied with, the Architectural Control Committee may, in its sole and exclusive discretion, give the Owner of such Lot and improvements written notice to such effect, and, thereafter, the Board, Declarant or the Architectural Control Committee, on behalf of the Association, shall be entitled to enjoin further construction at the builder's or Lot Owner's expense (as applicable) and to require the removal or correction of any work in place that does not comply

with the approved Plans. If any improvements shall be altered or replaced on any Lot otherwise than in substantial conformity with the approved Plans therefor, such action shall be deemed to have been undertaken without requisite approval of the Architectural Control Committee and to be in violation of this Declaration; and the Board, Declarant or the Architectural Control Committee, on behalf of the Association, shall be entitled to take action as permitted under this Declaration with respect thereto.

8.05 Interior Alterations. An Owner may make improvements and alterations within the interior of such Owner's residence without first obtaining Architectural Control Committee approval, provided such interior improvements and interior alterations do not change the exterior appearance of any improvements, including, without limitation, changes in window locations, window design or window materials.

8.06 Changes. No construction or installation of improvements on a lot that is inconsistent with, in addition to, or materially different from, any previously approved Plans shall be commenced or permitted until the Plans reflecting any and all such changes or additions have been submitted to, and approved by, the Architectural Control Committee in accordance with this Article; provided, however, no such approval is required for changes within the interior of any building that do not in any way change the exterior appearance.

8.07 Limitation on Liability. Declarant, the Association, the Board (or any of its members) and the Architectural Control Committee (or any of its members), shall not, individually or in combination, be liable in damages (or otherwise) to any Person submitting plans or specifications for approval or to any Owner of any portion of the Property, by reason of subjective decisions, mistake in judgment, negligence or nonfeasance arising out of, or in connection with, the approval or disapproval or failure to approve or to disapprove any plans submitted; provided, however, this provision does not apply to acts of willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or to any act expressly specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable. Declarant, the Association, the Board (or any of its members) and the Architectural Control Committee (or any of its members) shall not, individually or in combination, be liable in damages (or otherwise) in connection with any construction, design, engineering or defect associated with any improvement (or otherwise) constructed on the Property.

**APPROVAL OF PLANS BY THE ARCHITECTURAL CONTROL COMMITTEE DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER THAT SUCH PLANS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN, ENGINEERING AND CONSTRUCTION PRACTICES. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE OWNER TO DETERMINE AND SEE THAT SUCH OWNER'S PLANS AND SPECIFICATIONS COMPLY WITH ALL SUCH REQUIREMENTS AND PRACTICES.**

**ARTICLE IX**  
**EASEMENTS AND MAINTENANCE OF PONDS,**  
**FLOOD PLAINS, DRAINAGE WAYS AND OTHER**  
**COMMON PROPERTIES**

9.01 Utility Easements. Declarant, the Association and providers of utility services to the Subdivision shall have, and are hereby granted, easements for installation, maintenance, repair, removal and operation of utilities and drainage facilities on, under and across the Easement Areas and for the removal of any obstruction that may be placed in such Easement Areas that would constitute interference with the use of any such easement, or with the use, maintenance, operation or installation of any such utility. The City or the utility company exercising such easement rights shall promptly repair any damage to landscaping, sprinkler systems or other improvements resulting therefrom; provided, however, neither the City nor any utility company shall have any obligation to repair any improvements installed in any Easement Areas that are prohibited by the Plat.

9.02 Common Properties. Full rights of ingress and egress shall be had by the Association as set forth in this Declaration for the purpose of maintaining and using the Common Properties as set forth herein.

9.03 Other Easements. Declarant and the Association shall have an easement for full right of ingress and egress at all times over and upon the Property for the exercise of any and all rights under this Declaration and for the carrying out by the Association of their other rights, functions, duties and obligations set out in this Declaration. Any such entry by Declarant or the Association upon a Lot shall be made with as much minimum inconvenience to the affected Owner as practical.

9.04 Responsibilities of the Association for Maintenance of Ponds, Flood Plains, Drainage Ways and Other Common Properties.

The Association shall have the sole responsibility to maintain the Common Properties, including any ponds, creeks, flood plains, drainage ways and/or common amenities in a condition not less than the minimum standards required by the City, and the Association shall perform, or cause to be performed, any maintenance or construction of drainage ways reasonably deemed necessary by the City. The Association's costs of maintaining the Common Properties will be collected from the Owners through Assessments as provided in Article IV hereof. Except as provided in Section 4.10 hereof, the Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Properties.

9.05 Maintenance Easement. The City shall have, and is hereby granted, a maintenance easement for the maintenance and construction of drainage facilities on, under and across the Easement Areas and for the removal of any obstruction that may be placed on such Easement Areas that would constitute interference with the use of any such easement, or with the maintenance or construction of any drainage facilities located thereon. The City shall promptly repair any damage to landscaping, sprinkler systems or other improvements resulting from the use of such easement. The maintenance easement granted herein includes the right, but not the obligation, of the City to construct drainage facilities on, under and across the Easement Areas and to otherwise maintain same should the Association fail to properly maintain same as provided herein. In order to secure payment of any expenses that the City may incur in the construction or maintenance of any drainage facilities, the City shall have the rights provided in Section 4.10 hereof.

9.06 Maintenance Reserve Fund. In order to provide for the maintenance obligations contained herein, the Declarant shall use its best efforts to establish, through Assessments, a maintenance reserve fund in an amount equal to two (2) months dues based on full membership in the Association for the maintenance of the Common Properties. Thereafter, the Association shall maintain such fund in an amount the Board shall, in its sole and absolute discretion, determine to be sufficient.

**ARTICLE X**  
**GENERAL PROVISIONS**

10.01 Binding Effect and Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Declarant, the Association, legal representatives thereof, and successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date of the recording of this Declaration, after which time this Declaration shall automatically be extended for three (3) successive periods of ten (10) years each, unless after such fifty (50) years an instrument executed and duly acknowledged by Owners owning, in the aggregate, at least seventy-five percent (75) of the residential Lots has been recorded in the Real Property Records of Tarrant County, Texas, abolishing this Declaration.

10.02 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the sole and exclusive opinion of the Board, will best effect the intent of Declarant's general plan of development as reflected in this Declaration. The Board shall have the right, power and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret the provisions thereof, and any determination, construction or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that any such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the office of the County Clerk of Tarrant County, Texas. 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. The singular wherever used herein shall be construed to mean the plural when applicable and vice versa, and the use herein of any gender shall mean any other gender when applicable. Any and all exhibits referred to herein and attached hereto are made a part hereof by reference. This Declaration shall be construed under, and in accordance with, the internal laws of the State of Texas. In the event of a dispute involving this Declaration to which the City is made a party, venue for such dispute shall be in Tarrant County, Texas.

10.03 Amendments. Except as otherwise provided in Section 4.10 hereof or in this Section, this Declaration, or any provisions hereof, may be terminated or amended as to any portion of the Property only by a document duly executed and acknowledged by Owners holding, in the aggregate, seventy-five percent (75%) of the votes of all Members in Good Standing (both classes of Members) present at a duly called meeting at which a Regular Quorum is present. No such termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the Secretary (herein so called) of the Association confirming the vote of the Members adopting such termination or amendment as required above and recorded in the Real Property Records of Tarrant County, Texas. Notwithstanding the above, Declarant, without the joinder of any other party, shall have the sole and absolute right: (a)



to make any changes to this Declaration, as determined by Declarant, within one (1) year following the date of recordation of this Declaration in the Real Property Records of Tarrant County, Texas, and (b) thereafter, to make minor changes or amendments to this Declaration at any time, as determined by Declarant from time to time, to correct or clarify errors, omissions, mistakes or ambiguities contained herein. Notwithstanding (b) above, no amendments shall be made to the following provisions of this Declaration unless such have been first approved by Owners owning at least sixty-one (61) Lots plus Declarant (for so long as Declarant owns at least one (1) Lot) evidenced by the execution of any such amendment by such Owners and Declarant (if applicable):

- (a) changing the provisions requiring membership in the Association as provided in Section 3.02 hereof;
- (b) changing the allocation of voting rights as provided in Section 3.04 hereof;
- (c) changing the definitions of a Regular Quorum and Special Quorum as provided in Section 3.05 hereof;
- (d) changing the type of, and basis for, allocation of Assessments as provided in Article IV hereof;
- (e) changing the provisions of Article II hereof or Article IX hereof regarding rights of the City;
- (f) changing the provisions regarding the subordination of the Assessment Lien as provided in Section 4.11 hereof;
- (g) changing the provisions regarding affiliated contracts as provided in Section 6.03 hereof; or
- (h) changing this Section.

10.04 Enforcement. Declarant, the Association and the Owners shall have the right, but not the obligation, to enforce the covenants and restrictions set out in this Declaration. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended or modified, to restrain or enjoin violations thereof, to recover damages or to seek such other relief available pursuant to applicable law. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant, the Association and each Owner (and any lessees, tenants or other occupants of any Owner's Lot) shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers and remedies provided in this Declaration shall be cumulative and not restrictive of any other remedies at law or in equity, and the exercise by a Person of any particular right, power or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to any such Person.

10.05 No Waiver or Obligation to Enforce. No delay or failure on the part of Declarant, the Association or any owner to invoke any available right, power or remedy with respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to such party upon the recurrence or continuance of said breach or the occurrence of a different breach. Declarant and the Association, or its officers or Board, shall not be under any obligation to take any action to enforce the terms of this Declaration.

10.06 Liens/Validity and Severability. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one (1) or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which such other provisions and covenants shall remain in full force and effect.

10.07 Owner/Occupant Records. Except for those Owners who purchase Lots from Declarant, any Person, on becoming an Owner of a Lot, shall immediately furnish the Board a true and correct copy of the recorded instrument of conveyance vesting such ownership in said Owner. It shall be the responsibility of the Owner (and a non-Owner occupant of a Lot, if any) to keep such information current and to advise the Association of any changes.

10.08 Notices. Any notice required to be given to Declarant, the Association or any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when actually delivered by hand-delivery or three (3) days after any such notice has been deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed (a) for notice to an Owner to the address of the Owner as shown on the records of the Association at the time of such mailing, and (b) for notice to

Declarant or the Association (until such time as the Association obtains a notice address separate from that of Declarant) to 7005 Whippoorwill Court, Colleyville, TX 76034; Attn: Mr. Robert J. Flynn, Manager, or at such other address specified by Declarant or the Association by a document recorded for such purpose in the Real Property Records of Tarrant County, Texas.

10.09 Mortgagees. The holder of a mortgage of any interest in a Lot (herein referred to as a "Mortgagee") shall be furnished with written notification from the Association of any default by the respective Owner of that Lot in the performance of obligations set forth in this Declaration provided that the Association has theretofore been furnished, in writing, with the correct name and correct address of such Mortgagee and a request to receive such notifications. No default by an Owner of a Lot under any provision of this Declaration shall affect any existing lien or mortgage on that Lot. A Mortgagee shall not be liable for Assessments made with respect to a Lot during any period in which its only interest in the Lot is that of a Mortgagee.

10.10 Approvals. No approval by Declarant, the Board or the Architectural Control Committee pursuant to the provisions hereof shall be effective unless in writing, except as otherwise expressly provided herein.

10.11 Imposition of Violation Fines. In the event that any Person fails to cure (or fails to commence and proceed with diligence to complete the work necessary to cure) any violation of this Declaration within ten (10) days after receipt of written notice from the Board designating the particular violation, the Board shall have the power and authority to impose upon that Person a fine for any such violation (herein referred to as a "Violation Fine") not to exceed Five Hundred and No/100 Dollars (\$500.00). There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a Person for the same violation. The Violation Fines, together with interest at the Default Rate of Interest and any costs of collection, including, but not limited to, reasonable attorneys' fees, shall be part of any such Violation Fine. Violation Fines shall be Special Member Assessments.

10.12 Approval by Lender. By its execution hereinbelow, \_\_\_\_\_ Bank, as the current owner and holder of a lien on the Property, hereby consents to the execution and recordation of this Declaration, and hereby expressly subordinates the lien held by it to this Declaration.

EXECUTED as of this \_\_\_\_ day of \_\_\_\_\_, 2005.

**DECLARANT:**

Tuscany Keller, Ltd., a Texas Limited Partnership

By: Flynn Land Development, LLC, a Texas Limited Liability Company, its General Partner

By: \_\_\_\_\_  
Robert J. Flynn  
Manager

ACCEPTED AND AGREED TO BY  
THE UNDERSIGNED LENDER IN ACCORDANCE WITH  
SECTION 10.12 HEREOF:

\_\_\_\_\_ Bank

By: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF TEXAS  
COUNTY OF TARRANT**

BEFORE ME, the undersigned authority, on this day personally appeared Robert J. Flynn, Manager of Flynn Land Development, LLC, a Texas limited liability company and General Partner of Tuscany Keller, Ltd., a Texas limited partnership, known to me to be the person and officer whose name is subscribed to the foregoing, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said limited liability company and limited partnership, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Notary Public, State of Texas

Notary's name printed: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**STATE OF TEXAS  
COUNTY OF TARRANT**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_ Bank, known to me to be the person whose name is subscribed to the foregoing, and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed, and as the act and deed of said lender, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Notary Public, State of Texas

Notary's name printed: \_\_\_\_\_

My Commission expires: \_\_\_\_\_