

**DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BARRIO ANTIQUO SUBDIVISION
A Private Subdivision**

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HIDALGO

WHEREAS, TITUS LTD., a Texas Limited Partnership by and through its General Partner, ZIA HOLDINGS, LLC., hereinafter called "Declarant", is the owner in fee simple of certain real property located in Hidalgo County, Texas and known by official plat designation as **BARRIO ANTIQUO SUBDIVISION**, an addition to the City of McAllen, Hidalgo County, Texas, pursuant to a plat recorded in Volume ___, Page ___, Map Records of Hidalgo County, Texas.

WHEREAS, Declarant desires to subject all of the above described property to the protective covenants, conditions, restrictions, liens and charges as hereinafter set forth, pursuant to an established general plan for the improvement and development of said property;

NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title, or interest in or to the above described property or any part thereof and their heirs, successors, and assigns, and which easements restrictions, covenants and conditions shall inure to the benefit of each owner thereof.

Article 1
Definitions

Section 1. "Association" shall mean and refer to Barrio Antiquo Homeowners Association, Inc., a non-profit corporation, [or a similar non-profit corporation if name is not available] its successors and assigns, which is formed by the Owners for the purpose of enforcing the covenants, restrictions and agreements set forth herein.

Section 2. "Common Area" shall mean and refer to all real property located within the boundaries of the subdivision which are not otherwise located within or a part of any lot or dedicated to the public, as set forth on the plat or map of the subdivision as recorded in the Map Records of Hidalgo County, Texas, together with any improvements located thereon.

Section 3. "Declarant" shall mean and refer to Tutus, Ltd. in its capacity as the initial developer of the subdivision, and its successors and/or assigns, provided that in order to be a successor or assignee declarant, the subsequent developer must acquire all of the remaining lots which have not been initially sold by the initial developer.

Section 4. "Lot" shall mean any of the thirty eight (38) numbered plots of land shown on the recorded subdivision map referred to above with the exception of the common area. If a numbered plot of land lies between two (2) other numbered lots and said middle numbered plot of land is acquired in fraction by the two (2) adjoining property owners, then the expanded plot of land containing the initial numbered area, plus the additional fraction, shall still be considered to be as if the same were one for purposes of voting (See Article II, section 3) and for purposes of easements if permitted by the municipal authorities (See Article IV)

Section 5 "Maintenance" shall mean the exercise of reasonable care to keep buildings, fences, sprinklers, fountains, signs, landscaping, lighting, gate, streets, alleys, curbs, gutters, sidewalks, and other related improvements and fixtures, whether enumerated or not in the common area, in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth. Streets, gates, alleys, curbs, gutters, sidewalks, street lights and traffic control devices, as defined in the McAllen Code of Ordinances, shall be constructed and maintained to City of McAllen specifications and as per ordinance sections 134-167 and 134-

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Section 6. "Member" shall mean every person or entity who holds membership in the association.

Section 7. "Mortgage" shall mean a conventional mortgage or a deed of trust.

Section 8. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

Section 9. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 10. "Subdivision" shall mean the subdivided real property hereinbefore described and such additions thereto as may be brought within the jurisdiction of the association as hereinafter provided.

Section 11. "Committee" shall mean the Architectural Control Committee as the same is set out in Article VIII hereinafter.

Section 12. "City Ordinance Laws" with regard to maintenance requirements, all terms herein are as defined in the code of ordinances of the city of McAllen, regardless of any differing definitions in this declarations of covenants, conditions or restrictions.

Section 13. "Limited Common Area" All front and rear yards shall be limited common elements insofar as they shall belong to the lot owners, however, they shall be maintained by the Association, including the responsibility of the Association for the maintenance, repair and replacement of the sidewalks and landscaping along the front and rear of all Lots. Front yards shall be defined as the area between the street curb and the minimum building setback line on each lot together with any additional garden areas between the minimum setback line and the actual front of the residential structure with said line extending to the side yards.

Article II ASSOCIATION MEMBERSHIP VOTING RIGHTS AND POWERS

Section 1. "Membership" Every owner of a lot except lot 38 shall be a member of the association; membership shall be appurtenant to and may not be separated from ownership of a lot, save and except that the Association, if it acquires lots shall not hold membership in itself.

Section 2. "Voting Rights" The association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all owners with the exception of Declarant and Association, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in a given lot, all such persons shall be members and the vote for such lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any lot owned by Class A members.

Class B. The Class B member shall be Declarant, who shall be entitled to exercise five votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding with the Class B membership, or on December 31, 2010, whichever first occurs.

Section 3. "Partial Lot Voting" Any owner acquiring additional property or properties immediately adjacent to its initial numbered lot, as provided in Article 1, section 4, shall not be entitled to additional votes as a result of such additional properties, save and except the acquisition of more than fifty percent (50%) of such adjacent lot in which case. Owner shall be entitled to one additional vote for said additional property. Any Owner, who has sold a minor portion of its lot, but in any event less than fifty percent (50%) of its lot, with prior written approval of the Committee as provided for herein, shall not be entitled to a full vote as a result of such ownership.

Section 4. "Powers" The Association, in addition to the powers it already possesses in its charter, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its members to make physical improvements to the Common Area as the Association shall deem to be in the best interest of the subdivision and the Owners, to contract for legal, accounting and other professional services, to contract for security, paving, landscaping and/or any other services,

to borrow funds, to employ employees directly or through an operator, to bring an action(s) for injunctive relief and/or damages against any Owner for failure to comply with any Article and/or Section herein, and to otherwise do that which it believes necessary to protect or defend the Common Area and facilities located therein, the Association and/or any of its properties from loss or damage, by suit or otherwise.

Article III Assessments

Section 1 "**Lien and Personal Obligation of Assessments**" Declarant hereby covenants for each lot, except lot 38, within the subdivision, and each owner of a lot is hereby deemed to covenant by acceptance of his deed for such lot, whether or not it shall be so expressed in his deed, to pay to the association (1) annual assessments and (2) special assessments for capital improvements. Such assessments will be established and collected as herinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees shall also be the personal obligation of the person or persons who owned the lot at the time the assessment fell due. However, all future transferees of lots shall have the obligation, prior to purchase, to verify with the Association and/or Declarant that such assessments have been paid to date and that the property to be acquired is free and clear of all assessed indebtedness.

Section 2. "**Purpose of Annual Assessments**" The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the improvements situated within same or within the control of the association. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

- a. Maintenance and repair of the common area to the extent not required to be performed by governmental authority or an Owner.
- b. Water, sewer, garbage, electrical, lighting, telephone, gas, and other necessary utility service for the common area.
- c. Acquisition of furnishings and equipment for the common area as may be determined by the association, including without limitation all equipment, furnishings, and personnel necessary or proper for the use of the recreational facilities
- d. Maintenance and repair of all structures in the common area, including, but not limited to, streets, alleys, curbs, gutters, sidewalks, fences, sprinkler systems, landscaping, jogging trails (if any), electric gates, fountains, storm drains, sanitary sewers, street lighting, traffic control devices, traffic markers, and signs as well as perimeter fencing or walls and exterior landscaping within the confines of the subdivision and/or any maintenance and repair required by the City of McAllen.
- e. Fire insurance, if obtainable, covering the full insurable replacement value of the improvements in the common area with extended coverage.
- f. Liability insurance insuring the Association against any and all liability to the public, to any owner, or to the invitees or tenants of any owner arising out of their occupation and/or use of the common area. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association.
- g. Workmen's compensation Insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.
- h. A standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors.
- i. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations,

insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this declaration or by law, or which shall be necessary or proper based on the opinion of the Board of Directors of the Association for the operation of the common areas, for the benefit of lot owners, or for the enforcement of these restrictions.

- j. In addition to the maintenance of the common area, the Association shall provide exterior maintenance on each lot as follows. In the event an Owner of any lot, his family, guests, invitees, agents or others using the lot premises, shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Declarant or the Committee shall have the right, through their agents and employees, to enter upon said lot and repair, maintain and restore the lot and exterior of the buildings and any other improvements erected thereon, all at the expense of Owner, and such expense of maintenance or repair shall be added to and become part of the assessment to which said lot is subject to.
- k. Maintenance and repair of all structures or improvements, formerly within the common area, if any, and which may be situated in an area dedicated and/or transferred to the public use in the future, as set forth in Article IV, Section 1 (b), for which the association reserves the right to continue the operation and concurrently has the obligation to maintain and repair.
- l. Maintenance and repairs of all of the limited common areas as defined herein.

Section 3. "Fixing of and Maximum Annual Assessments"

- a. Until January 1, 2008, the minimum annual assessment per lot shall be eight hundred and no/100ths dollars (\$800.00) per lot, prorated monthly, subject to Section 6 below PROVIDED HOWEVER THAT DECLARANT OWNED LOTS SHALL BE ASSESSED AT A MAXIMUM ANNUAL AMOUNT OF \$25.00. Declarant shall monitor the expenses actually incurred within the first three (3) months after the execution of this Declaration and set a monthly amount necessary to meet the actual expenses, but not to exceed the amount set out hereinbefore.
- b. Commencing with January 1, 2008, and continuing thereafter, all assessments shall be fixed by the Association in advance of January 1st of each calendar year, after giving due consideration to the anticipated cost of all common area maintenance obligations, and other costs of operating the Association. The Association shall have the right to collect such assessments in advance on either an annual or quarterly basis. If at any time the Association determines that the assessments for that fiscal year are insufficient to discharge all assessments to be incurred or payable during that assessment year by the Association, the Association may increase the assessments to cover such costs (incurred or to be incurred), and such increase shall become effective at the beginning of the next annual or quarterly assessment period. If required, assessments shall be prorated for the period from the commencement thereof to the end of the then current calendar year of the Association.
- c. From and after January 1, 2009 , to December 31, 2009, the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a vote of the members.
- d. From and after January 1, 2010, the maximum annual assessment may be increased above twenty-five percent (25%) from the prior year by the vote or written assent of a majority of each class of members.
- e. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum prescribed herein.

Section 4. "Special Assessments for Capital Improvements" In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement (including, but not limited to streets, alleys, lighting, and/or utilities) on the common area, including fixtures and personal property related thereto. Any such assessment must be approved by a majority of each class of members.

Section 5. "Notice and quorum for action authorized under Sections 3 and 4" Written notice of any meeting called for the purpose of taking any action authorized by Sections 3 or 4 shall be sent to all members not less than three (3) nor more than ten (10) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each class of members, members who were not present in person or by proxy may give their assent in writing within three (3) days after the date of such meeting.

Section 6. "Uniform rate of assessment" Both annual and special assessments must be fixed at a uniform rate for all lots, except lot 38 and except where additional real estate is added to the initial lot and in such case, that specific assessment shall be increased proportionately to the addition amount of land annexed.

Section 7. "Commencement and collection of annual assessments" The annual assessments provided for herein shall commence as all lots on recording of the Subdivision plat. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of the due date thereof and shall fix the dates such amount become due. Assessments may be made payable monthly. Notice of the annual assessments shall be sent to every owner subject thereto, The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessment against a specific lot has been paid, and may, on or before February 15 of each year, cause to be recorded in the office of the County Clerk of Hidalgo County, a list of delinquent assessments as of that date.

Section 8. "Effect of nonpayment of assessments, remedies of the Association" Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest at the maximum rate permitted by law from the due date until paid. The Association may bring an action at law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

Section 9. "Subordination of assessment lien to mortgages" The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the assessment lien as to payment which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IV

PROPERTY RIGHTS

Section 1. "Owner's Easements of Enjoyment" Every owner of a lot shall have a right and easement of enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to such lot, subject to the following rights of the Association.

- a. The right to suspend the right of use of recreational facilities and the voting rights of any owner for periods during which assessments against his lot remain unpaid, and the right, after hearing by the Board of Directors, to suspend such rights for a period not exceeding three hundred sixty-five (365) days for any infraction of the published rules and regulations of the Association.

b. The right to dedicate or transfer all or any part of the common area, including any improvements, to any municipality, public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-thirds (2/3rds) of each class of members agreeing to such dedication or transfer has been duly recorded.

Section 2. "Delegation of Use" Subject to such limitations as may be imposed by the bylaws, each owner may delegate his right of enjoyment in and to the common areas and facilities to the members of his family, his guests, tenants, and invitees.

Section 3. "Easements of Encroachment" There shall exist reciprocal appurtenant easements as between adjacent lots and between each lot and any portion or portions of the common area adjacent thereto for any encroachment due to the unwillful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is in accordance with the terms of this declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between adjacent lots, and between each lot and any adjacent portion of the common area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an owner, save and except that each property owner with property for a distance not to exceed three (3) feet. However, the adjacent neighboring lot owner shall have a permanent non-exclusive easement for the use and enjoyment of such three (3) feet for a garden/patio or other similar use, but may not construct permanent improvements upon such. A construction, water discharge, air, repair/maintenance and entry/exit perpetual use shall continue to exist for these purposes in favor of the property owner whose structure has such an overhang and shall constitute a burden and encroachment on the adjoining property owner's use. The easements for construction shall be during the initial construction phase, the easement for repair/maintenance shall be for emergencies and to be used during reasonable hours for reasonable times for the purposes granted and with mutual respect between the parties for each other's use.

Section 4. "Other Easements"

- a. Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision map. Within these easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area of each lot and all improvements therein shall be continuously maintained by the owner of such lot, except for improvements for maintenance of which a public authority or utility company is responsible.
- b. No dwelling unit or other structure of any kind shall be built, erected, or maintained on any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.
- c. There shall exist appurtenant easements of access to all private streets, alleys and, as necessary, lots, within the subdivision to the City of McAllen for the use of city personnel and equipment on city business.

Section 5. "Right of Entry" The Association, through its duly authorized employees, delegated agents, shall have the right after reasonable notice to the Owner thereof, to enter any lot at any reasonable hour on any day to perform such maintenance as may be authorized herein, save and except in case of an emergency, which threatens either life or property, in which case advance notice shall not be required.

Section 6. "No Partition" There shall be no judicial partition of the common area, nor shall Declarant, or any

Owner or any other person acquiring any interest in the subdivision or any part thereof, see judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any lot owned in co-tenancy.

ARTICLE V. Use Restrictions

Section 1. "Residential Use" All lots, and each and every one thereof, are for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double dwelling, lodging house, rooming house, hospital, sanatorium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on such premises, or on any part thereof, save and except the business of the Declarant and the transferees of the Declarant in developing all of the lots as provided in Section 19 below. No improvement or structure whatever, other than a quality private dwelling house, patio walls, swimming pool, garage, carport, or servants quarters may be erected, altered, placed, maintained or permits to remain on any lot in the subdivision, without the express written consent of the Committee.

Section 2. "Construction Specifications & General Contractor Approval" Any residence constructed on said lots must have a ground floor area of not less than nine hundred (900) square feet, exclusive of open or screened porches, terraces, patios, driveways, carports and garages and must be approved unanimously by the Architectural Control Committee. Plans for any improvement or residence along with a full landscaping plan must be unanimously approved by the architectural control committee. The exterior walls of any residence shall consist of one hundred percent (100%) stucco finish construction, unless the unanimous consent of the Committee is obtained. The roof shall consist of committee approved roof tile or Modified roofing is permitted when roof is screened from the public. No evaporative cooler or air conditioner shall be placed, installed, or maintained on the roof or wall of any building or structure unless it is completely concealed from public view. All coolers and air conditioning units shall be concealed. Prior written approval of all proposed general contractors shall be required from the Architectural Control Committee prior to commencing construction.

Section 3. "Similarity of Buildings" All buildings whether one (1) or two (2) story shall have a consistent color and facade, although of varying heights, to promote the appearance of harmony and unity in design and development. Any subsequent changes in exterior color or facade, although the height may vary, must be consistent for the entire subdivision and first be approved by the Architectural Control Committee to insure the appearance of conformity with existing structures.

Section 4. "Setbacks" All buildings, structures, fences, hedges, outbuildings and appurtenances are subject to the setback restrictions noted in the Subdivision Plat and/or enforced by the city of McAllen. Lots 21 and 25 can build fences adjacent to the rear street or alley right of way.

Section 5. "Consolidation and Partial lots" None of said lots shall be resubdivided in any fashion, except that any person owning two (2) or more adjoining lots may consolidate such lots into a single building site, with the privilege of constructing improvements thereon as permitted by Sections 2 and 3 herein. However, any sale of a portion or fraction of a lot must be approved by a unanimous vote of the Committee, and then only if the remaining portion of sufficient square footage to viably be used as an independent lot for the construction of a residence within the other limitations set forth herein, or if said remaining portion is to be utilized by the adjoining lot owner to augment both larger properties (i.e., one on each side of the property being purchased in fractions).

Section 6. "Easements" Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Subdivision Plat. No utility company, water district, political subdivision, or other authorized entity using the easement herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, trees or flowers, or to other property of the Owners situated within any such easements.

Section 7. "Noxious or Offensive Activities Prohibited" No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, save and except Section 19 below.

Section 8. "Occupancy" No private dwelling house erected upon any lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, except as herein required. Nor shall any residence, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein and all other covenants, conditions, reservations and restrictions herein set forth. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home or other temporary structure shall be placed or erected upon any lot either permanently or temporary unless approved in writing by the Committee. Rental of any servant's quarters is prohibited, the occupancy thereof being limited to either guests or servants of the Owner of said lot.

Section 9. "Signs" No signs of any character shall be allowed on any lot except one sign of not more than five (5) square feet, advertising the property for sale or rent; provided, however, that Declarant and any other persons or entity engaged in the construction and sale of a residence within the subdivision shall have the right, during the construction and sales period, to construct and maintain such facilities as may be reasonably necessary for such construction and sale, including signs and storage areas, but not including a temporary residence or office, save and except Section 19 below.

Section 10. "Garbage Tanks, Equipment, etc." No lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. No elevated tanks of any kind shall be erected, placed or permitted on any part of such premises. All clothes lines, garbage cans, equipment, coolers, wood piles or storage piles shall be walled or fenced in to conceal them from the view of the neighboring lots road or streets. Plans for all enclosures of this nature must be approved by the Committee prior to construction, save and except Section 19 below.

Section 11. "Animals" No animals, livestock or poultry of any kind shall be raised, bred or kept on any lots, except that no more than two (2) dogs and two (2) cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

Section 12. "Fences, Walls, Hedges and Utility Meters" No fence, wall, hedge or utility meter shall be placed or permitted to remain on any lot nearer to the street or streets adjoining such lot than is permitted for the main residence on such lots. All fences shall be constructed of wrought iron, brick or masonry block covered with stucco or combination stucco, wrought iron and brick only. There shall be no chain-link or inferior constructed fences whatsoever, unless completely concealed within a fence constructed in accordance with this subparagraph. Plans for all fences must be approved by the committee prior to construction save and except section 19 below. Plans for all fences must be approved by the committee prior to construction save and except section 19 below.

Section 13. "Trucks, Buses and Trailers" No truck, bus, motor home, trailer, commercial vehicle, boat or other equipment shall be left parked or placed in the street in front of any lot; and such shall not be permitted on any lot except for construction and repair equipment while the residence or residences are being built or repaired on such lot; and no truck, bus, boat or trailer shall be parked in the driveway or any portion of the lot in such manner as to be visible from the street.

Section 14. "Prohibited Activities" No professional, business or commercial activity to which the general public is invited shall be conducted on any lot.

Section 15. "Utility Lines, Antennas" All electrical service and telephone lines shall be placed underground. No exposed or exterior radio or television transmission or receiving antennas or satellite dishes shall be erected, placed,

or maintained on any of the lots, but this restriction may be waived by the Committee. Any waiver of these restrictions shall not constitute a waiver as to other lots, lines or antennas.

Section 16. **Garage** All residences erected on these subdivision lots must have at least a two-car garage incorporated into the main structure. Each home with the exception of lots 1-2 and 38 which are intentionally omitted from this restriction shall have a rear entry garage. No front entry will be allowed except on lots 1 & 2.

Section 17. **Driveways and Sidewalks** Driveways and sidewalks must be constructed of concrete, brick, or other material receiving the approval of the Committee, only.

Section 18. **Insurance** Nothing shall be done or kept on a lot or on the common area which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his lot or the common area which would result in the cancellation of insurance on any residence or on any part of the common area, or which would be in violation of any law.

Section 19. **Declarants Special Rights** Declarant or the transferees of Declarant shall undertake the work of developing all lots included within the subdivision, the completion of that work, and the sale, rental, or other disposal of residential units is essential to the establishment and welfare of the subdivision as an ongoing residential community. In order that such work may be completed and the subdivision be established as a fully occupied residential community as soon as possible, nothing in this declaration shall be understood or construed to:

(a) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work.

(b) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part or parts of the subdivision property owned or controlled by Declarant, Declarant's transferees, or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the subdivision as a residential community, and the disposition of lots by sale, lease, or otherwise;

(c) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors or Declarant or Declarant's transferees from conducting on any part or parts of the subdivision property owned or controlled by Declarant or Declarant's transferees or their representatives, the business of completing such work, of establishing the subdivision as a residential community, and of disposing of lots by sale, lease, or otherwise; or

(d) Prevent Declarant, Declarant's transferees, or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the lots owned or controlled by any of them as may be necessary in connection with the sale, lease, or otherwise of subdivision lots.

As used in this section, the words "its transferees" specifically exclude purchasers of lots.

ARTICLE VI.

Owners' Obligation to Repair

Each owner shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

ARTICLE VII

Owners Obligation to Rebuild

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within eight (8) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners. All plans for rebuilding must be approved by the Committee.

Article VIII

Architectural Control

Section 1.- Architectural Control Committee" Declarant shall designate and appoint the initial Architectural Control Committee ("Committee") consisting of (2) adult persons, those being FRED HARMS AND MICHAEL HARMS., which Committee shall serve until December 31, 2010, If any member becomes unable or unwilling to continue to serve during such term, Declarant, his successor or assigns, shall appoint a successor to finish the respective term. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After December 31, 2010, the duties, rights, powers and authority of the Committee shall automatically transfer, without any further formality, to the Association. Further, any or all of the duties, rights, powers and authority of the Committee may be assigned at any time, upon the unanimous decision of the Committee, to the Association. From and after the date of such assignment, the Association shall have all right authority and power and shall be obligated to perform the functions of the committee as provided herein.

Section 2. Function." The Committee shall perform the functions provided for and consistent with the provisions of this Declaration.

Section 3. Powers" The Committee shall have and exercise the powers and rights provided for in and consistent with the provisions of this Declaration. Each Committee Member shall have one (1) vote. Except in those instances in this Declaration where the unanimous action of all Committee Members is required for the Committee to make a decision or take an action, no action shall be taken or any decisions made by the Committee except with the concurrence of not less than two (2) Committee Members, however, a designated representative approved unanimously by all two (2) Committee Members shall have the sole power to act on behalf of the Committee. The designated representative's power may be revoked by a written communication to all lot owners. Each Committee Member shall be entitled to receive (but may waive) not less than five (5) days written notice of each meeting of the Committee and of each action proposed to be taken and decision proposed to be made by the Committee (whether or not at a meeting). The Committee may adopt such Bylaws to govern the performance of its functions under this Declaration as the Committee Members may deem appropriate, provided that no provision of such Bylaws shall be contrary to any provision of this Declaration.

Section 4. Approval of Plans and Specifications and Contractor" (a) No building, fence, wall, sidewalk, road, driveway or other structure shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made, except as set forth below, until samples of the materials or exterior paint and roofing materials, and the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Committee as to the harmony of external design and location of such improvements in relation the surrounding structures and topography. (b) No tree or shrub shall be planted on nor shall the landscaping be altered without the approval of the Committee from approved landscaping plans. (c) No construction may commence without the approval of the Committee of the project contractor.

Section 5. Failure of Committee to Act" In the event that any plans and specifications are submitted to the Committee as provided herein (not less than twice), and a written receipt of delivery is obtained, and such Committee shall

fail either to approve or reject such plans and specifications for a period of thirty (30) days following such second submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had. All plans must comply with the stated restrictions set forth in this document.

Section 6. **Failure to Comply** Failure to comply with Section 4 herein shall submit the respective lot Owner to injunctive relief and/or damages, pursuant to Article II, Section 4, The defendant lot owner shall pay all costs of court and attorney's fees borne by the Association or other entity bringing such action should the Association or other entity, as the case may be, prevail.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTY

Additional residential property and common area may be annexed to the subdivision with the consent of two-thirds (2/3rds) of each class of members.

ARTICLE X

GENERAL PROVISIONS

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

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

Section 3. **Amendments** Covenants and restrictions of this declaration may be amended by duly recording an instrument executed and acknowledged by not less than three-quarters (3/4) of each class of members.

Section 4. **Subordination** No breach of any of the conditions herein contained or reentry by reason of such breach shall defeat or render invalid the lien of any mortgage made in Good faith and for value as to the subdivision or any lot therein; provided, however, that such conditions shall be binding on any owner whose deed is acquired by foreclosure, trustees sale or otherwise.

Section 5. **Duration** The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, Association, or any member thereof for a period of thirty (30) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then owners of at least three-quarters (3/4) of the subdivision lots.

Article XI

Lot 38 Exception

Lot 38 is exempt from Articles II & III of this Declaration of Covenants, Conditions and Restrictions. Lot 38 will not enjoy the benefit or receive any use or privileges in the common areas nor will lot 38 be obligated to pay any assessments.