

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MERCER CROSSING COMMERCIAL PROPERTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MERCER CROSSING COMMERCIAL PROPERTY (this "Declaration") is made by TRANSCONTINENTAL REALTY INVESTORS, INC., a Nevada corporation ("Declarant"), as of the date set forth on the signature page hereof.

Declarant is the owner of the real property described in Exhibit "A" which is attached hereto and incorporated herein by reference. This Declaration imposes upon the Properties (hereinafter defined) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties, and establishes a procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of that plan, this Declaration provides for the formation of Mercer Crossing Commercial Association, Inc., to own, operate and maintain Common Areas (hereinafter defined), and to administer and enforce the provisions of this Declaration, the Bylaws, the Design Guidelines and the Restrictions and Rules (hereinafter defined).

Declarant hereby declares that all of the real property described in Exhibit "A" attached hereto and any additional property subjected to this Declaration by Supplemental Declaration (as defined in Article I) shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors, and assigns. This Declaration does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann. Section 81.001, et seq. (Vernon 1984).

Article I
DEFINITIONS

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

1.1. "Area of Common Responsibility": the Common Areas, together with such other areas, if any, for which the Association has or expressly assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or any contract.

1.2. "Articles of Incorporation" or "Articles": the Articles of Incorporation of the Association, as filed with the Secretary of State of the State of Texas.

1.3. "Association": Mercer Crossing Commercial Association, Inc., a Texas non-

profit corporation, and its successors and assigns.

1.4. "Base Assessments": assessments levied on all Units subject to assessment under Section 8.7 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

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

1.6. "Bylaws": the Bylaws of the Association, as the same may be amended.

1.7. "Class "B" Control Period": the period of time until the first to occur of the following:

(a) Eighty-Five Percent (85%) of the Developable Land has been hereafter conveyed to Persons other than affiliates of the Declarant, the current owner(s) of the Developable Land, affiliates of the current owner(s) of the Developable Land or the Association;

(b) 40 years after the date upon which this Declaration is recorded in the Real Property Records; or

(c) when, in its discretion, the Declarant so determines and unequivocally declares in a recorded instrument signed and notarized by Declarant and recorded in the Real Property Records.

1.8. "Common Area": all real and/or personal property and/or improvements thereon, which the Association owns, leases or otherwise holds possessory or use rights in (by way of easement, license or otherwise) for the common use and enjoyment of the Owners, including without limitation private storm drains, private streets, landscaping within public rights-of-way, private utilities, private parks, walkways, open space, trails, landscaping, irrigation systems, waterways, water features, floodways, medians and monument signs. The term shall include any Limited Common Areas (hereinafter defined).

1.9. "Common Expenses": the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and/or the Articles of Incorporation. Common Expenses shall not include any expenses paid for with assessments levied under or pursuant to the Park West Declaration.

1.10. "Community Standard": the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard is expected to evolve over time as development progresses and may be more specifically determined by the Declarant, the Board of Directors and the Architectural Review Committee; but at a minimum, shall be a standard representing a "first class level of quality". "First class level of quality" shall mean the quality

standard for a majority of first class commercial property associations in the metropolitan Dallas/Fort Worth, Texas area with comparable assessments and facilities, and taking into account the particular agricultural or other unique features of the Properties in question.

1.11. "Cost-Sharing Agreement": any recorded instrument obligating all or a portion of the Units within the Properties to share certain costs incurred or expected to be incurred by the Residential Association for maintenance, repair, replacement, operation and insuring of certain properties or improvements described in such instrument which directly or indirectly benefit the Units obligated to share such costs.

1.12. "Declarant": Transcontinental Realty Investors, Inc., or any designee, successor, successor-in-title or assign who is designated as the Declarant or an additional Declarant or its designee in a recorded instrument executed by the Declarant or the immediately preceding Declarant, it being understood that there may be more than one Declarant.

1.13. "Design Guidelines": the design and development guidelines and architectural review procedures adopted by the Declarant pursuant to Article IX and applicable to all Units within the Properties, as they may be modified in accordance with Article IX.

1.14. "Developable Land": all of the real property described on Exhibits "A" and "B" of this Declaration, as it may be amended, exclusive of any wetlands, bodies of water, and property subject to conservation easements or similar easements requiring that it be maintained in its natural state.

1.15. "Limited Common Area": a portion of the Common Area intended for the primary use or benefit of one or more, but less than all, Units, as more particularly described in Article II.

1.16. "Member": a Person subject to membership in the Association, as provided in Section 3.2.

1.17. "Mercer Crossing": that certain development located in, Dallas County, Texas, which is comprised of the Properties and the real property subject to the Residential Declaration, as they each may be expanded from time to time.

1.18. "Mortgage": a mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to a Unit.

1.19. "Mortgagee": an institutional or governmental holder of a Mortgage which makes, holds, insures or guarantees Mortgage loans in the ordinary course of its business.

1.20. "Mortgagor": any Person who gives a Mortgage.

1.21. "Owner": one or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract

specifically so provides. If a Unit is subject to a written, recorded lease with a term in excess of three years and the lease specifically so provides, then upon filing a copy of the lease with the Board, the lessee (rather than the fee owner) will be considered the Owner during the term of the lease for the purpose of exercising all privileges of membership under this Declaration and the Bylaws.

1.22. "Parcel": any two or more Units which are arranged, owned and operated as a common project or regime.

1.23. "Parcel Assessment": assessments levied solely against the Units within the Parcel(s) to which Areas of Common Responsibility or Limited Common Areas are assigned or within which or adjacent to such Parcel(s) such Areas of Common Responsibility or Limited Common Areas exist.

1.24. "Parcel Association": any condominium association or other owners association specific to, and having concurrent jurisdiction over, any Parcel.

1.25. "Park West Declaration": that certain Declaration of Covenants, Conditions and Restrictions dated April 6, 1994 executed by Park West/Fairview Associates and recorded in Volume 94066, Page 06090, Real Property Records, Dallas County, Texas, as amended by instruments recorded in Volume 97231, Page 731, Real Property Records, Dallas County, Texas and Volume 2001073, Page 5357, Real Property Records of Dallas County, Texas, which Park West Declaration affects a portion of the Properties as therein provided.

1.26. "Person": a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.27. "Private Amenities": certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties, which are privately owned and operated by Persons other than the Association for recreational and related purposes, whether on a club membership basis, use fee basis, or otherwise, and all related and supporting facilities and improvements.

1.28. "Properties": the real property described in Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article VII.

1.29. "Real Property Records": the Real Property Records of Dallas County, Texas.

1.30. "Residential Association": Mercer Crossing Residential Association, Inc. a Texas non-profit corporation, its successors and assigns, being the entity responsible for administering the Residential Declaration.

1.31. "Residential Declaration": The Declaration of Covenants, Conditions and Restrictions for Mercer Crossing Residential Property, recorded or to be recorded in the Real Property Records of Dallas County, Texas, as it may be amended and supplemented from time to time.

1.32. "Restrictions and Rules": those use restrictions and rules affecting the Properties which may be adopted, modified and repealed as set forth in Article X. The initial Restrictions and Rules are set forth on Exhibit "C" attached hereto.

1.33. "Special Assessment": assessments levied in accordance with Section 8.5 of this Declaration.

1.34. "Specific Assessment": assessments levied in accordance with Section 8.6 of this Declaration.

1.35. "Supplemental Declaration": an instrument filed in the Real Property Records pursuant to Article VII hereof which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on such additional property. The term shall also refer to any instrument recorded by the Declarant pursuant to Article VII hereof which designates parcel boundaries.

1.36. "Unit": a portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use and occupancy for purposes consistent with this Declaration, any other applicable covenants, and applicable zoning. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall not include Common Areas, or property dedicated to the public. If any Unit is subdivided or resubdivided, whether by plat or deed, each such subdivision shall be considered a Unit hereunder and votes and liability for assessments shall be recomputed for each subdivision in accordance with the terms and provisions hereof.

Article II PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) this Declaration, the Bylaws and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board and the membership to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area pursuant to Article X hereof;
- (d) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(e) the right of the Association, acting through the Board, to mortgage, pledge, encumber or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) the rights of certain Owners to the primary use and benefit of those portions of the Common Area designated "Limited Common Areas," if any, as more particularly described in Section 2.2; and

(g) the rights of Park West Three Owner's Association, Inc. (the "Park West Association") and others pursuant to the Park West Declaration.

Any Owner may extend its right of use and enjoyment of the Common Areas to any lessees and other occupants of its Unit and their invitees, subject to regulation in accordance with Article X.

2.2. Limited Common Area. Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners, occupants and invitees of less than all Units. By way of illustration and not limitation, Limited Common Areas may include signage, landscaping, plazas, promenades, malls, parking areas, lakes or ponds, and other portions of the Common Area within a particular Parcel Association.

Initially, the Declarant shall designate any Limited Common Area as such and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on the subdivision plat relating to such Common Area; provided, any such assignment shall not preclude the Declarant from later assigning use of the same Limited Common Area to additional Units and/or Parcels, for so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 7.1. Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon the approval of Members representing a majority of the total Class "A" votes in the Association, if Common Area, or a majority of the total Class "A" votes allocated to the Units to which the Limited Common Areas are assigned, if Limited Common Areas, and the approval of a majority of the total Class "A" votes allocated to the Unit(s) to which the Limited Common Areas are to be assigned. As long as the Declarant owns any property described on Exhibits "A" or "B" for development and/or sale, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the votes allocated to the Units to which particular Limited Common Areas are assigned, permit Owners of other Units to use all or a portion of such Limited Common Areas upon payment of user fees.

2.3. Private Amenities. Access to and use of the Private Amenities is strictly subject to the invitation and the rules and procedures of the respective Owners of the Private Amenities, and no Person gains any right to enter or to use those facilities by virtue of membership in the Association or ownership or occupancy of a Unit.

All Persons, including all Owners, are hereby advised that no representations or warranties, either written or oral, have been or are made by the Declarant, the Association, or by any other Person acting on behalf of any of the foregoing, with regard to the nature or size of improvements to, or the continuing ownership or operation of the Private Amenities. No purported representation or warranty, written or oral, in conflict with this Section shall be effective without an amendment to this Declaration executed or joined in by the Declarant or the owner(s) of the Private Amenity(ies) which are the subject of such amendment.

The ownership or operational duties of and as to the Private Amenities may change at any time and from time to time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent entity, (b) conversion of the membership structure to an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of the owner of the Private Amenity. No consent of the Association, any Parcel Association, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether, subject to the terms of any written agreements entered into by such owners.

2.4. No Partition. Except as expressly permitted in this Declaration, there shall be no judicial partition of the Common Areas. No Person shall seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring or disposing of real property which may or may not be subject to this Declaration.

2.5. Condemnation. If any part of the Common Areas shall be taken (or conveyed in lieu of or under threat of condemnation by the Board upon approval of Owners representing at least 67% of the total Class "A" vote in the Association and the Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Areas on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Areas to the extent lands are available, unless within 60 days after such taking the Declarant (so long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration) and Owners representing at least 75% of the total Class "A" vote in the Association shall otherwise agree. Any such construction shall be

in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

Article III
ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be responsible for the management, maintenance, operation and control of the Common Area. The Association shall be primarily responsible for enforcement of this Declaration and such rules regulating use of the Properties as the Board or the membership may adopt pursuant to Article X. The Association or its appointed committee shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and Texas law.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Unit, and if a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges may be exercised by the Owner, if a natural person, or, in the case of an Owner which is a corporation, partnership or other legal entity, by any officer, director, partner, or trustee, or by any other individual designated by the Owner from time to time in a written instrument provided to the Secretary of the Association.

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

(a) Class "A." Class "A" Members shall be all Owners. Each Class "A" Member shall be entitled to one (1) vote per \$1,000.00 of Unit Assessed Value of such Owner's Unit.; provided that no votes shall be exercised on account of any property which is exempt from assessments under Section 8.10.

If there is more than one Owner of any Unit, the votes for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. In the absence of such advice, the vote for such Unit shall be suspended if more than one co-Owner seeks to exercise it.

Any Owner may assign the right to cast all or a portion of the votes allocated to its Unit to the lessee of any portion of such Unit by written proxy filed with the Secretary of the Association in accordance with the Bylaws.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of: actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the Bylaws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in this Declaration and in the Bylaws. The Class "B" membership shall terminate upon the earlier of:

- (i) two years after termination of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and unequivocally declares in a recorded instrument signed and notarized by Declarant and recorded in the Real Property Records.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Units which it owns, whether improved or unimproved.

Article IV RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Areas and all improvements thereon (including, without limitation, landscaping, furnishings, equipment and other personal property of the Association used in connection with the Common Area), and shall keep it in good, clean, attractive, first-class and sanitary condition, order, and repair, consistent with this Declaration and the Community Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved or unimproved real estate located within the properties described in Exhibits "A" or "B," personal property and leasehold or other property interests; provided, the Declarant shall not convey any real estate to the Association as Common Area which the Declarant knows to contain hazardous substances which would require remediation or create environmental liability for the property owner under state or federal law. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

The property conveyed to the Association by the Declarant from time to time shall be

conveyed subject to all applicable governmental requirements, permits, conditions and approvals and subject to any easements then in existence affecting the property. The Declarant hereby reserves the right to grant easements over the Common Areas and the right to require the Association to take such actions as may be necessary to grant or dedicate easements over the Common Areas.

In addition to the foregoing rights of the Declarant, the Declarant may, in its sole discretion, make certain property and/or facilities available to the Association on a temporary or permanent basis for use by the Members upon such commercially reasonable terms and upon payment of such fees as may be set forth in any written agreement between the Declarant and the Association and the Association shall be obligated to comply with the terms of any such agreement.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the Bylaws, or Association rules in accordance with procedures set forth in the Bylaws, including monetary fines and suspension of the right to vote. In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

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

4.5. Governmental Interests. So long as the Declarant owns any property described in Exhibits "A" or "B," the Declarant may designate sites within the Properties for fire, police, utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the Owner consents.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member, including members of the Architectural Review Committee established under Article IX, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions as to which liability is limited under this Section 4.6 and applicable law.

The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors of the Association shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to any City in which any portion of the Properties is located (a "City") or to any other local, state, or federal governmental or quasi-governmental entity.

4.8. Security. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEN BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY OR SAFETY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SAFETY MEASURE OR SECURITY SYSTEM CAN NOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH IT IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

4.9. Cost-Sharing Agreement. The Association shall include in its annual operating budget such amounts as are necessary to fulfill the Association's financial obligations under any Cost-Sharing Agreement and shall cooperate with the Residential Association in carrying out

their respective rights and obligations thereunder.

Article V
MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain in a manner consistent with the Community Standard and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all landscaping and other flora, parks, ponds, signage, structures and other improvements, including private streets, if any, and pedestrian pathways/trails, situated upon the Common Area;

(ii) sidewalks, streetlights, special paved surfaces, landscaping, irrigation system, and signage within public rights-of-way within or abutting the Properties, except to the extent that such properties are maintained by a City, or by the Residential Association pursuant to the Residential Declaration or a Cost-Sharing Agreement, and landscaping and other flora within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(iv) lakes, ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and surface water management system for the Properties, including the shoreline of any storm water retention facility, any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and some or all of its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community Standard.

The Association may assume responsibility for maintenance of any Unit or Parcel and assess all costs of such maintenance against the benefited Unit or Parcel pursuant to Section 8.7

of this Declaration, as appropriate. This assumption of responsibility may take place only by contract with the Owner(s) of such Unit or Parcel or because, in the opinion of the Board, the level and quality of maintenance then being provided is not consistent with the Community Standard. The provision of services in accordance with this Section shall not constitute discrimination within a class.

(b) There are hereby reserved to the Association perpetual, nonexclusive easements over the Properties as necessary to enable the Association to fulfill its responsibilities under this Section. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry into any portion of a Unit not generally open to the public shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent.

(c) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

(d) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Limited Common Areas shall be a Parcel expense assessed as a Parcel Assessment solely against the Units within the Parcel(s) to which the Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Upon Board resolution, the Owners of Units within each Parcel shall be responsible for paying, through Parcel Assessments, costs of maintaining certain portions of the Area of Common Responsibility within or adjacent to such Parcel, which may include, without limitation, the costs of maintaining any signage, right-of-way and green space between the Parcel and adjacent public roads, private streets within the Parcel, and lakes or ponds within the Parcel, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Parcels which are similarly situated shall be treated the same.

(e) In the event that the Association fails to properly perform its maintenance responsibilities hereunder to meet the Community Standard, the Declarant may, upon not less than 10 days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2. Owner's Responsibility. Each Owner shall maintain its Unit and all structures, parking, areas and other improvements comprising the Unit, in a manner consistent with the

Community Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by the Association pursuant to Section 5.1 hereof or by a Parcel Association pursuant to any additional declaration of covenants applicable to such Unit. Such maintenance shall include, but is not limited to, the following:

- (a) prompt removal of all litter, trash, refuse and waste;
- (b) lawn mowing and fertilizing on a regular basis;
- (c) tree and shrub replacement, pruning and mulching,
- (d) watering of landscaped areas;
- (e) keeping exterior lighting and maintenance facilities in proper working order;
- (f) implementing and maintaining erosion-sedimentation control measures;
- (g) painting or staining, as appropriate, and regular maintenance and repair of the exterior of all improvements and signage;
- (h) roof repair and replacement as necessary to maintain a neat, uniform appearance over the surface of the roof;
- (i) keeping lawn and garden areas alive, free of weeds, and attractive;
- (j) keeping parking areas, driveways, curbs, gutters and roads in good repair and free of potholes, excessive cracks and weeds;
- (k) complying with all government health and police requirements; and
- (l) prompt repair of any exterior damage to improvements.

If any Owner fails properly to perform such Owner's maintenance responsibility hereunder, the Association may perform it and assess all costs incurred by the Association against the Unit and the Owner thereof in accordance with Section 8.6; provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner notice and an opportunity to cure the problem prior to entry.

5.3. Parcel's Responsibility. Except to the extent that such responsibility is assumed by the Association pursuant to Section 5.1, any Parcel Association whose common property abuts the right-of-way of any public street within the Properties shall maintain the landscaping on that portion of the right-of-way between the property line and the nearest curb of such street.

Any Parcel Association having any responsibility for maintenance of property within a particular Parcel shall perform such maintenance responsibility in a manner consistent with the Community Standard. If it fails to do so, the Association may perform such responsibilities and assess the

costs against all Units within such Parcel as provided in Section 8.6.

5.4. Standard of Performance. Maintenance, as such term is used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community Standard. All maintenance and irrigation shall be performed in a manner consistent with the Community Standard and all applicable covenants and restrictions.

Notwithstanding anything to the contrary contained herein, the Association, and/or an Owner shall not be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own.

Article VI INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any property, for which it has maintenance or repair responsibility, regardless of ownership. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to ponds, rights-of-way, medians, easements, and walkways which the Association is obligated to maintain. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00, with additional incremental coverage as the Board may deem necessary upon annexation of additional property to this Declaration per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

- (iii) Workers compensation insurance and employers liability insurance;
- (iv) Directors and officers liability coverage;
- (v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined by the Board in the exercise of its business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
- (vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation flood insurance, boiler and machinery insurance, and building ordinance (rebuilding in accordance with updated codes or ordinances) coverage.

In addition, the Association may obtain and maintain property insurance on the insurable improvements within any Parcel in such amounts and with such coverages as agreed upon pursuant to Section 7.5 hereof. Any such policies shall provide for a certificate of insurance to be furnished to the Parcel Association, and to the Owner of each Unit insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment, except that premiums for insurance on Limited Common Areas may be included in the Parcel Assessment of the Parcel(s) benefited unless the Board of Directors determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Dallas, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished, upon request, to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a) hereof. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Parcel expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners or lessees, or the employees or invitees of either, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.5.

All insurance coverage obtained by the Board shall:

- (i) be written with a company whose primary business is providing insurance coverage and which is authorized to conduct such business in the State of Texas, and which

satisfies such minimum financial strength and size requirements as the Board, in the exercise of its business judgment, deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Parcel shall be for the benefit of the Owners of Units within the Parcel and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and

(iv) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, employees, agents, and invitees;

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

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it

existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Owners representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association or the Parcel, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds, after applicable deductions, are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a) hereof. So long as the total Special Assessment levied against each Unit does not exceed 25% of the Base Assessment levied against the Unit for the current year, the Board may levy such special Assessment without a vote of the Owners, otherwise, such Special Assessment shall require approval of the Owners as provided in Section 8.5 hereof.

6.2. Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance and to provide the Association with proof of same, for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Parcel Association (if any) for the Parcel in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If any Owner fails to provide such insurance, and if the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner thereof pursuant to Section 8.6 hereof.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Unit, the Owner shall proceed promptly to repair or to

reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Parcel Association responsible for common property within the Parcel in the same manner as if the Parcel Association were an Owner and the common property were a Unit. Additional recorded covenants applicable to any Parcel may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Parcel and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Article VII ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation Without Approval of Membership. Until all property described on Exhibits "A" and "B" has been subjected to this Declaration or 40 years after the recording of this Declaration, whichever is earlier, Declarant may unilaterally subject to the provisions of this Declaration all or any portion of the real property described on Exhibit "B." Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property to be annexed in the Real Property Records. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Nothing in this Declaration shall be construed to require Declarant or any successor or any other party to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Real Property Records describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such

annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. Declarant reserves the right to unilaterally amend this Declaration from time to time so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the Declarant's request, so long as same does not materially negatively affect the intended form and function of the common area remaining.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Parcel Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any Supplemental Declaration annexing additional property may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B."

Article VIII ASSESSMENTS

8.1. Creation of Assessments. The Association is hereby authorized to levy assessments against each Unit for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not less than 10% per annum, subject to the limitations of Texas law), reasonable late charges (in such amount as the Board may establish by resolution from time to time), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon the Unit against which each assessment is levied until paid, as more particularly provided in Section 8.8. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its

Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a processing fee for the issuance of such certificate.

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

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on any of its unsold Units which are subject to assessment under Section 8.7, or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. The Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3. Computation of Base Assessment. (a) At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, which may include a capital contribution to a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

Base Assessments shall be allocated by the Board among all Units in the same ratio that the value of the Unit, exclusive of any Common Areas (the "Unit Assessed Value"), as assessed by the Dallas County Appraisal District (or if such Unit is not assessed by the Dallas County Appraisal District, then by the taxing or appraisal authority that establishes tax values for the municipal tax roll of the municipality or governmental district in which the Unit is situated) bears to the total value of all of the Properties, exclusive of any Common Areas (the "Total

Assessed Value"), as assessed by the Dallas County Appraisal District (or if such Unit is not assessed by the Dallas County Appraisal District, then by the taxing or appraisal authority that establishes tax values for the municipal tax roll of the municipality or governmental district in which the Unit is situated). Subject to the provisions of subsection (c) below, such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year. The total budget shall be allocated among all Units subject to assessment under Section 8.7 in accordance with the terms and provisions hereof.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article VII, the Declarant may, but shall not be obligated to, reduce the Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.2), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in the Declarant's discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and its characterization shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years.

So long as the proposed Base Assessment rate does not exceed the applicable Maximum Assessment Rate, as defined in subsection (c), the budget and proposed Base Assessment rate may be adopted by the Board without a vote of the membership. If the proposed Base Assessment rate would exceed the applicable Maximum Assessment Rate, the proposed Base Assessment rate shall become effective only upon approval by 67% of the Class "A" votes represented at duly called meeting of the membership at which a quorum is present, and the consent of the Class "B" Member. If a quorum is not present at the meeting originally called, a second meeting may be called and the quorum for the second meeting shall be reduced to one-half of the quorum originally required.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least 30 days prior to the effective date of such budget. Such budget and assessment shall become effective unless disapproved at a meeting by a vote of Owners representing at least a majority of the total Class "A" votes in the Association, and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering a budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within 10 days after delivery of the budget and notice of assessments.

The Board may revise the budget and any assessment from time to time during the year, subject to the notice requirements and the limitations set forth in subsection (b) below.

If any proposed budget is disapproved or the Board fails for any reason to determine the

budget for any year, then until such time as a budget is determined, the budget most recently in effect for the immediately preceding year shall continue for the current year.

(b) Notwithstanding the preceding Section 8.3(a), the following provisions of this Section 8.3(b) shall govern and control the determination of the Unit Assessed Value of a Unit which is in the process of being improved with a commercial project. In the event that a commercial project is under construction or has been completed, but its market value (as increased by such improvements) has not yet been reappraised and recognized on the ad valorem tax rolls by the relevant municipal appraising authority, the Board may adjust the Unit Assessed Value of such Unit to reflect its estimated market value based upon improvements completed as of January 1 of the year in which the Base Assessment shall be levied. Further, at the time that a certificate of occupancy is issued for all or a portion of a Unit, the Board may make an additional adjustment to the Unit Assessed Value of the Unit to reflect the estimated assessed valuation of the Unit at substantial completion. The Base Assessment levied with respect to a Unit may be adjusted effective as of January 1, in any year that the Unit Assessed Value for the Unit is adjusted in accordance with the preceding and may be adjusted effective as of the first day of the month of issuance of a certificate of occupancy for all or any portion of an Unit. Such adjustment to the Base Assessment will be made as a result of the adjustments in assessed valuation determined by the Board, in its reasonable judgment, in accordance with the preceding provisions of this Section 8.3. The determination of the Board as to the Unit Assessed Value of the Unit as substantially complete shall be the basis for the determination of Base Assessments until such time as the Dallas County Appraisal District (or if such Unit is not assessed by the Dallas County Appraisal District, then by the taxing or appraisal authority that establishes tax values for the municipal tax roll of the municipality or governmental district in which the Unit is situated) has reappraised the Unit as substantially complete and such reappraisal is incorporated into the tax rolls and records of the relevant municipality. Thereafter, Base Assessments shall be determined in accordance with the provisions of Section 8.3(a). Any valuations for assessment purposes made by the Board in accordance with the foregoing shall be made in a reasonable and good faith manner and shall yield consistent valuations among different Owners and different Units. In the event that any such valuation for assessment of a Unit made by the Board subsequently proves to be higher than the valuation for assessment of such Unit made by the relevant municipal appraising authority, the Owner of such Unit shall be entitled to a credit against subsequent assessments in an amount equal to the excess assessments paid by the Owner of such Unit as a result of such higher valuation.

(c) The Maximum Assessment Rate which may be levied on any Unit without a vote of the membership shall be \$0.25 per \$1,000.00 of Unit Assessed Value, for the 2004 fiscal year and shall automatically increase for each subsequent fiscal year, by 5% or the percentage increase in the Consumer Price Index during the previous fiscal year, whichever is greater (the "Maximum Assessment Rate"). The "Consumer Price Index" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region: Base: 1982-84 = 100). In the event the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no

such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternative index. The Maximum Assessment Rate for any year may be increased by an amount greater than that set forth above with the assent of at least 51% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present, and the assent of the Class "B" Member.

8.4. Reserve Budget and Capital Contribution. The Board may annually prepare a reserve budget which takes into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the reserve budget, with respect both to amount and timing by annual Base Assessments over the budget period.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted, extraordinary or other expenses which the Board determines to be more appropriately handled outside of the annual operating budget. Except as set forth in Article VI, any Special Assessment which, when combined with the Base Assessment, would result in a total assessment rate for any fiscal year in excess of the Maximum Assessment Rate permitted for such fiscal year, shall require the affirmative vote or written consent of Owners representing at least 51% of the total Class "A" votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6. Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties or within a Parcel as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with Bylaws Section 3.23, before levying a Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against any Parcel to reimburse the Association for costs incurred in bringing the Parcel into compliance with the provisions of the

Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and rules, provided the Board gives the Owners within such Parcel prior written notice and an opportunity to be heard before levying any such assessment.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the month following (a) the month in which such Unit is made subject to this Declaration, or (b) the month in which the Board first determines and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Parcel Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.8. Lien for Assessments. All assessments authorized in this Article VIII shall constitute a lien in favor of the Association against the Unit upon which they are levied until paid. The lien shall also secure payment of interest, late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Texas law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.7, including such acquirer, its successors and assigns.

8.9. Failure to Assess. Failure of the Board to fix the amount of any assessment or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay annual Base and Parcel Assessments on the same basis as due for the last year for which an assessment was determined, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls.

8.10. Exempt Property. The following property shall be exempt from payment of Base

Assessments, and Special Assessments:

- (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;
- (b) any property dedicated to and accepted by any governmental authority or public utility; and
- (c) any property owned by a Parcel Association for the common use and enjoyment of its members, or owned by members of a Parcel Association as tenants-in-common.

In addition, the Board may, but shall not be obligated to, exempt from payment of assessments any property devoted to church, school not-for-profit organization or similar civic purposes.

Notwithstanding the above, all property made subject to this Declaration, including property, if any, exempt from assessments, shall be subject to all provisions of this Declaration, including but not limited to, Article IX, Architectural Standards.

Article IX
ARCHITECTURAL STANDARDS

9.1. General. No improvements or structures shall be placed, erected, modified, constructed, reconstructed or installed upon any portion of the Properties and no improvements (including staking, clearing, excavation, grading, and other site work, exterior alteration of existing improvements, and plantings or removal of landscaping materials, with such activities being referred to in this Article as "Work") shall take place within the Properties except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 9.3 hereof.

This Article shall not apply to the activities of the Declarant, nor shall it apply to the activities of the Association during the Class "B" Control Period, unless Declarant or the Association intends to construct a vertical structure on the Properties.

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

9.2. Jurisdiction.

(a) Declarant Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of significant portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance the Declarant's reputation as a community

developer and do not impair the Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that Declarant shall have a non-exclusive easement over, across, under and upon the Owner's Unit for the purpose of inspecting Owner's Unit, as set forth in this Declaration. No Work shall be commenced on such Owner's property unless and until the Declarant has given its prior written approval for such Work, which approval may be granted or withheld in Declarant's sole discretion; provided however, that if such Work conforms to the terms of this Declaration, approval shall not be unreasonably withheld.

In reviewing and acting upon any request for approval, Declarant shall be acting in its own interest and shall owe no duty to any other Person. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed by Declarant and recorded in the Real Property Records.

(b) Architectural Review Committee. The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to an architectural review committee appointed by the Board (the "ARC"), subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) the right of Declarant to veto any decision of the ARC which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this Article, the jurisdiction of the ARC shall be limited to such matters as are specifically delegated to it by the Declarant. Unless and until such time as Declarant delegates all or a portion of its reserved rights, the Association shall have no jurisdiction over architectural matters.

Upon expiration or termination of the Declarant's rights under this Article, the Association shall assume jurisdiction over architectural matters hereunder and the Association, acting through the ARC, shall be entitled to exercise all powers previously reserved to the Declarant under this Article; provided, however, in exercising the discretion previously reserved to the Declarant, the Association and the ARC shall be subject to commonly recognized corporate and fiduciary responsibilities to the Association membership which shall not apply to the Declarant's exercise of such discretion.

The ARC, if and when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. In addition, the ARC may, with the prior approval of the Board, retain architects, engineers or other professionals to assist in the review of any application and the Association may charge any fees incurred for such assistance to the applicant.

9.3. Guidelines and Procedures.

(a) Design Guidelines. The Declarant may prepare initial Design Guidelines, which may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one Parcel to another depending upon the location, unique characteristics and intended use of the Parcel. The Design Guidelines are intended to provide guidance to Owners and developers regarding matters of particular concern to the Declarant in considering applications for architectural approval. The Design Guidelines are not the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of any application.

The Declarant shall have the right to amend the Design Guidelines from time to time but only in a manner not inconsistent with the Community Standard. The ARC, if appointed, may propose amendments to the Design Guidelines; however, no amendment proposed by the ARC shall be effective without prior notice to and the written approval of Declarant so long as the Declarant has any rights under this Article. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. The Declarant is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part, without limitation, except that such Amendments must be consistent with the Community Standard.

The Declarant shall make copies of the Design Guidelines, if any, available to Owners and developers who seek to engage in development or construction within the Properties, and may charge a reasonable fee to cover any printing or reproduction costs.

(b) Procedures. Prior to commencing any Work within the scope of Section 9.1 hereof, an application for approval of such Work shall be submitted to the Declarant or the ARC, as appropriate (the entity having jurisdiction at any particular time is referred to in this Article as the "reviewing entity"), in such form as may be required by the reviewing entity or the Design Guidelines. Procedures adopted by the Declarant or the ARC may require that the application include plans and specifications ("Plans") showing the site layout, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore, and other features of the proposed construction or modification, as required by the Design Guidelines and as applicable. The reviewing entity may require the submission of such additional information as it deems necessary to consider any application.

The reviewing entity may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the Design Guidelines, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The reviewing entity shall, within 30 days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the

segments or features of the Plans which are objectionable and, at its option, provide suggestions for the curing of such objections. In the event the reviewing entity fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the reviewing entity written notice of such failure to respond and stating that unless the reviewing entity responds within ten (10) days of receipt of such notice, approval shall be deemed granted and, upon such further failure, approval shall be deemed to have been given, subject to the right of the Declarant to veto approvals by the ARC as set forth in this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 9.5 hereof.

Within three (3) business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by Declarant, the ARC shall give written notice to the Declarant of such action, together with such other information as the Declarant may require. The Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on any Work for which approval has been granted within six (6) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans for reconsideration prior to commencing such Work. All Work shall be completed within two (2) years of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the reviewing entity.

9.4. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be too late to require changes to the improvements involved, but the reviewing entity may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications, or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

9.5. Variances. The Declarant may, but shall not be required to, authorize variances from compliance with any of the provisions of the Design Guidelines when extraordinary circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as Declarant may determine in its sole discretion. Such variances shall be granted only when, in the Declarant's judgment, unique and extraordinary circumstances exist and no Owner shall have any right to demand or obtain a variance. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the Declarant or the ARC from denying a variance in other circumstances.

9.6. Limitation of Liability. The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Neither the Declarant nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all structures and improvements constructed within the Properties are of comparable quality, value, or size, or of similar design. Neither the Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any plans or specifications submitted, revised or approved hereunder, nor for any structural or other defects in work done according to approved plans, nor for any injury, damages, or loss arising out of the manner, design or quality of approved construction or modifications to any Unit.

9.7. Enforcement. Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from the Declarant, the Association, the Board, or the ARC, Owners shall, at their own cost and expense, remove any nonconforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should an Owner fail to remove and restore as required, the Declarant, the Board or their designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a Specific Assessment.

The Declarant and the Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines from continuing or performing any further activities in the Properties, subject to the notice and hearing procedures contained in the Bylaws. Neither the Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

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

Article X RESTRICTIONS AND RULES

10.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for Mercer Crossing as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within Mercer Crossing, and the vitality of and sense of community within Mercer Crossing, all subject to the

Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community and to regulate and control the Area of Common Responsibility. The Properties are subject to the land development, architectural, and design provisions set forth in Article IX, the other provisions of this Declaration governing individual conduct and uses of and actions upon the Properties, and the guidelines, rules and restrictions promulgated pursuant to this Article, all of which establish affirmative and negative covenants, easements, and restrictions on the Properties.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide or shall be deemed to provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

10.2. Authority to Promulgate Restrictions and Rules. Initial use restrictions, applicable to all of the Properties are attached as Exhibit "C" to this Declaration. Subject to the terms of this Article, and provided that such actions are consistent with the Community Standard, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to its duty to exercise business judgment on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on Exhibit "C." The Board shall conspicuously publish notice of any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any rule adopted by the Board shall become effective unless disapproved at a meeting by Members representing at least 51% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the Bylaws.

(b) The Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand use restrictions and rules previously adopted by a vote of at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the Restrictions and Rules to any requesting Member or Mortgagee.

(d) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the Developable Land.

(e) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines, which may be modified only as provided in Article IX. All matters of architectural control and aesthetics shall be governed by the Design Guidelines.

10.3. Owners' Acknowledgment. ALL OWNERS AND OCCUPANTS OF UNITS ARE GIVEN NOTICE THAT USE OF THEIR UNITS IS LIMITED BY THE RESTRICTIONS AND RULES AS THEY MAY BE AMENDED, EXPANDED AND OTHERWISE MODIFIED HEREUNDER. EACH OWNER, BY ACCEPTANCE OF A DEED OR ENTERING INTO A RECORDED CONTRACT OF SALE, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF ITS PROPERTY MAY BE AFFECTED BY THIS PROVISION AND THAT THE RESTRICTIONS AND RULES MAY CHANGE FROM TIME TO TIME.

10.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment), neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations on their Units shall not be abridged, except that the Association may adopt time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants.

(d) Activities Within Unit. No rule shall interfere with the activities carried on within the confines of structures on Units, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants or invitees of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, or that create an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be materially changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit. The Association shall not impose any fee on transfer of any Unit greater than an amount based on the administrative costs to the Association of the transfer.

(g) Rights to Develop. No rule or action by the Association or Board shall impede Declarant's right to develop the Properties.

(h) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, and in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

The foregoing limitations apply to new rules only; nothing herein shall invalidate rules set forth initially on Exhibit "C" nor be construed as a limitation on amendment to this Declaration pursuant to Section 14.2 hereof.

Article XI EASEMENTS

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, and between adjacent Units, due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on a Unit or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc. There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company):

(a) a non-exclusive easement upon, across, over, and under all of the Properties (but not through a structure), for ingress, egress, installation, monitoring, replacing, repairing, and maintaining cable television systems, master television antenna systems or other devices for sending or receiving data and/or other electronic signals; security and similar systems; walkways; drainage systems; street lights; signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electric lines and meters; for the purpose of altering drainage and water flow across the Properties; and otherwise as may be necessary, in the sole discretion of the Declarant or the Association, for the performance of the Association's maintenance responsibilities under this Declaration; and

(b) the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

The Owner of any property to be burdened by any easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of any easement granted pursuant to this Section shall be subject to the written approval of the Owner of the property burdened by that easement, which approval shall not be unreasonably withheld, delayed or conditioned. Upon the grant of any easement pursuant to this Section, the grantee shall (a) cause all work associated with that easement to be performed with the least possible interference to the use and enjoyment of the property burdened by that easement; and (b) upon completion of all work associated with that easement, cause the property burdened by that easement to be restored, to the extent reasonably possible, to its condition prior to the commencement of the work.

Notwithstanding anything to the contrary contained in this Section, no above ground sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties except (a) as may be approved by the Declarant, as long as it has the unilateral right to subject additional property to this Declaration, or by the Board after the expiration of such rights, and then only as to such additional property; or (b) as may be constructed as a part of the original development and/or sale by the Declarant; or (c) as may be permitted by the terms of any easement affecting the Properties and recorded prior to the recording of this Declaration.

The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Properties, nor shall they be exercised in any manner which materially restricts or interferes with the use and development of the Unit.

11.3. Easements for Stormwater Drainage and Retention. Each portion of the Properties is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Properties for the purpose of stormwater drainage and runoff in accordance with the master drainage plan established by Declarant and approved by the applicable governmental entity, for the Properties, which easement shall include, but shall not be limited to, the right to tie into existing stormwater drainage facilities and to divert stormwater runoff from each Unit into such stormwater drainage facilities at such points and in such manner as, approved by the applicable governmental entity, and for the flow of stormwater runoff over the Properties to such points and from such points through the stormwater drainage facilities into wetlands, ponds, or other retention facilities within or outside the Properties. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge which the Declarant may hereafter impose or which may be imposed on the Properties, the Declarant or any Owner by any governmental entity having jurisdiction.

11.4. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves for itself, the Association and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation to enter upon the lakes, ponds and streams located within the Area of Common Responsibility (a) to install, keep, maintain and replace pumps thereon in order

to provide water for the irrigation of any of the Area of Common Responsibility; (b) to construct, maintain and repair any wall, dam, or other structure retaining water therein; and (c) to remove trash and other debris and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association and their successors, assigns and designees shall have a nonexclusive easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds or streams to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein and hereby, for the benefit of Declarant, the Association and their successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over Common Areas and Units (but not the structures thereon) adjacent to or within 25 feet of lakes, ponds, streams and wetlands within the Properties, in order: (a) to temporarily flood and back water upon and maintain water over such portions of the Properties; (b) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds and streams within the Area of Common Responsibility; (c) to maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands; and (d) to enter upon and across such portions of the Properties for the purpose of exercising its or their rights under this Section. Nothing herein shall be construed to make Declarant, the Association, or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

11.5. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, successors, successors-in-title, assigns, licensees and mortgagees, a perpetual, non-exclusive easement over the Common Areas for the purposes of enjoyment, use, access and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes but is not limited to a right of ingress and egress over the Common Areas for construction of roads and for tying in and installation of utilities on such property, and for access to and unrestricted use and enjoyment of the Private Amenities. Declarant agrees that it, its successors or assigns, shall be responsible for any damage caused to the Common Areas as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion benefiting from such easement is not made subject to this Declaration, the Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any private roadway owned by the Association which serves such property.

11.6. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the Bylaws, and the Association rules. This right may be exercised by any member of the Board, any officer, manager, agent or employee of the Association acting with the permission of the Board, and all police, fire and similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon a Unit to perform maintenance or cure any condition which may increase the possibility of a fire or other hazard, in the event that the Owner fails or refuses to perform such maintenance or cure such condition within a reasonable time after request by the Board. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry into any portion of a Unit not generally open to the public shall only be

authorized during reasonable hours and after receipt of the Owner's or occupant's consent.

11.7. Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees, a perpetual, non-exclusive easement over the Common Areas for the purpose of sponsoring or conducting educational, cultural, artistic, musical and entertainment activities and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement. The Association shall take no action which would interfere with or otherwise attempt to restrict the exercise of this easement.

11.8. Easements over Common Areas. In addition to the easements specifically described herein, Declarant does hereby reserve to itself, its successors and assigns, a perpetual, non-exclusive easement over all of the Common Areas for ingress, egress, access, use and enjoyment and for such other purposes as Declarant, in its sole discretion determines appropriate, together with the right to grant additional easements to such Persons and for such purposes as Declarant deems appropriate in its sole discretion.

Article XII DECLARANT'S RIGHTS

12.1. Transfer of Declarant Rights. Any or all of the special rights and obligations of the Declarant reserved in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the Bylaws, and provided further, no such transfer shall be effective unless it is unequivocally set forth in a written instrument signed by the Declarant and duly recorded in the Real Property Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

12.2. Use of Common Area. The Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient, or incidental to the construction, promotion of, or sale of Units, including, but not limited to, maintenance of business offices, signs, model units, and sales offices. The Declarant and its designees, together with the Members, shall have an easement for access to such facilities. The Board may establish fees for access and use of the Common Area.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion;

provided such improvements are consistent with this Declaration.

12.3. Approval of Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

12.4. Amendment. This Article may not be amended without the written consent of the Declarant so long as Declarant has any rights hereunder. The rights contained in Sections 12.1, 12.2 and 12.4 of this Article shall terminate upon the earlier of (a) 75 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

Article XIII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

13.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 13.2 ("Claims") shall be resolved using the procedures set forth in Section 13.3 in lieu of filing suit in any court.

13.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 13.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.3:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Restrictions and Rules);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.3.

13.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of Texas chapter of the Community Associations Institute or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the metropolitan Dallas, Texas, area.

3. If Claimant does not submit the Claim' to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in

writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

2. Unless the Parties agree in writing to be bound by the arbitrator's decision (the "Award") prior to the commencement of arbitration proceedings, any Party shall be free to reject the Award within 30 days thereafter by written notice to each Party and to sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal. Failure to reject the Award within 30 days shall be deemed an acceptance of the Award and it shall thereupon become final and binding and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

13.4. Allocation of Costs of Resolving Claims.

(a) Subject to Section 13.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

(c) If any of the Parties rejects the Award and any nonrejecting Party pursues a

judicial resolution under Section 13.3(d) (2), and the final judgment is either the same as the Award or more advantageous to any nonrejecting Party, each such nonrejecting Party shall be entitled to recover its Post Mediation Costs from the rejecting Party. If there is more than one rejecting Party, such nonrejecting Party's Post Mediation Costs shall be allocated pro rata among all rejecting Parties.

13.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative Proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

Article XIV GENERAL PROVISIONS

14.1. Duration.

(a) Unless terminated as provided in Section 14.1(b), this Declaration shall have perpetual duration. If Texas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided below. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise required by Texas law, this Declaration may not be terminated within the first 30 years after the date of recording except by an instrument signed by Owners of 90% of the total acreage within the Properties and by the Declarant, if the Declarant owns any portion of the Properties. After the thirtieth anniversary of the date of recording, termination may be accomplished by an instrument signed by Owners of at least 85% of the total acreage within the Properties and signed by the Declarant, if the Declarant owns any portion of the Properties or any property described on Exhibits "A" or "B". Any such instrument shall set forth the intent to terminate this Declaration and shall be recorded in the Real Property Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment.

(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may, but shall not be required to, unilaterally amend this Declaration for any purpose, provided such amendment does

not have the effect of changing the method of allocating assessments or voting rights, (iii) unreasonably interfering with the right of any existing Owner to use and enjoy its Unit in a manner which would have been permitted under this Declaration and applicable zoning immediately prior to such amendment without such Owner's consent; (iv) or is materially inconsistent with the Community Standard. Thereafter, and otherwise, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely and materially affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Declarant or its affiliates own property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner, and is not materially inconsistent with the Community Standard.

(b) By Owners. Except as provided above and otherwise specifically provided elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing at least 51% of the total Class "A" votes in the Association and the consent of the Declarant, as long as the Declarant owns any property subject to this Declaration. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Real Property Records unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may directly or indirectly remove, revoke, or modify the status of, or any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect any other provisions or applications.

14.4. Mortgagee Rights. Notwithstanding any other provision contained in this Declaration:

In the event that any Owner or Mortgagee furnishes a written request to the Association specifying the name and address of the Mortgagee and of the Unit in which it holds an interest, the Association shall give written notice to the Mortgagee of any default of the Owner of such Unit in performing or observing any of the terms, conditions, or agreements contained in this Declaration prior to taking any enforcement action. The Mortgagee shall have the right (but not the obligation) to remedy the default. Neither the Declarant nor the Association shall take any action with respect to the default, including, without limitation, any action to impose or enforce a lien against the property of the defaulting owner, unless the default remains unremedied for a period of 30 days after the Mortgagee's receipt of the written notice. If, however, the default is not reasonably susceptible of being remedied within 30 days after the Mortgagee's receipt of the notice, the Mortgagee shall have such additional time to remedy or cause the remedy of the default as may be reasonable, provided that the Mortgagee has given written notice to the Association of its intent to remedy the default and has commenced efforts to remedy the default within the initial 30 day period and thereafter diligently prosecutes such cure to completion.

14.5. Litigation. Except as provided below, after termination of the Class "B" membership, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding 75% of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision shall apply in addition to the provisions of Article XIII, if applicable.

14.6. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with any additional declaration or other covenants and restrictions applicable to any Parcel ("Parcel Restrictions"), and the Association may, but shall not be required to, enforce the latter. However, any Parcel Restrictions and the Bylaws, articles, rules, policies and practices of any Parcel Association adopted pursuant thereto shall be subject and subordinate to the provisions of this Declaration, the Bylaws, Articles, or policies and practices adopted by the Association and in the event of a conflict, the latter shall control. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.7. Use of the Words "Mercer Crossing". No Person shall use the words "Mercer Crossing" or any derivative thereof including, but not limited to, trademarks and logos or successor name adopted by Declarant for use in identifying the Properties, in the name of any building or any business or enterprise or in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name "Mercer Crossing" in printed or promotional materials solely to specify that particular property is located within the Properties, and the Association and the Residential Association shall be entitled to use the name

"Mercer Crossing" solely in its name.

14.8. Ownership of Unit by Government. Declarant shall have the right to exempt the United States, the State of Texas, or Dallas County, Texas, or any related entity, as the Owner of a Unit, from any of the restrictions contained in this Declaration, the Bylaws, or rules of the Association if such exemption is required by the United States, the State of Texas, or Dallas County or any related entity.

14.9 Compliance and Indemnification. Every Owner and occupant of any Unit shall comply with this Declaration, any Supplemental Declaration and other covenants applicable to its Unit, the Design Guidelines, Bylaws, and the rules of the Association. Subject to the terms of Article XIII, failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Owner(s), to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3 and in the Bylaws.

Each Owner shall indemnify and hold harmless the Association from any loss, damages, and expenses, including counsel fees, which it may incur as a result of the failure of such Owner, any occupant of such Owner's Unit, or any contractor, employee, or agent of such Owner acting within the scope of his contract, agency or employment, to comply with this Declaration, any Supplemental Declaration or other covenants applicable to such Owner's Unit, the Design Guidelines, Bylaws and rules of the Association.

14.10. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his, her or its Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.11 Notices. Except as otherwise expressly set forth herein, notice required to be given to any Owner or Mortgagee under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Owner or Mortgagee on the records of the Association at the time of such mailing. In the event that there are multiple Owners with respect to a single Unit the Association shall be obligated to send notice to only one (1) of the multiple Owners, and notice to one shall be deemed to be notice to all Multiple Owners may designate one (1) of their group as the person entitled to notice by so notifying the Association in writing of such person and the address thereof, but if no such person is designated the Association may notify any one (1) of such multiple Owners. Notices of past due assessments, of the intention to institute any of the punitive provisions hereof, of any sanctions to be imposed hereunder or of any violations of this Declaration shall be sent to the affected person or entity by certified mail, return receipt requested and addressed as aforesaid.

14.12. Exhibits. Exhibits "A," "B," "C" and "D" attached to this Declaration are

incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 8 day of July, 2004.

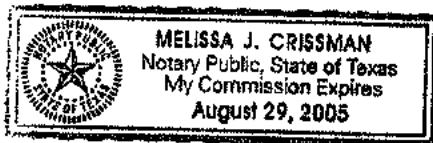
DECLARANT:

TRANSCONTINENTAL REALTY
INVESTORS, INC.

By: Lori Lee Burgin
Name: LORI LEE BURGIN
Title: Vice President

STATE OF TEXAS)
)
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 8 day of July, 2004, by Lori Lee Burgin Vice President of TRANSCONTINENTAL REALTY INVESTORS, INC., a Nevada corporation, on behalf of the corporation.



Melissa J. Crissman
Notary Public, in and for State of Texas

Exhibit "A"
Sheet 1 of 2

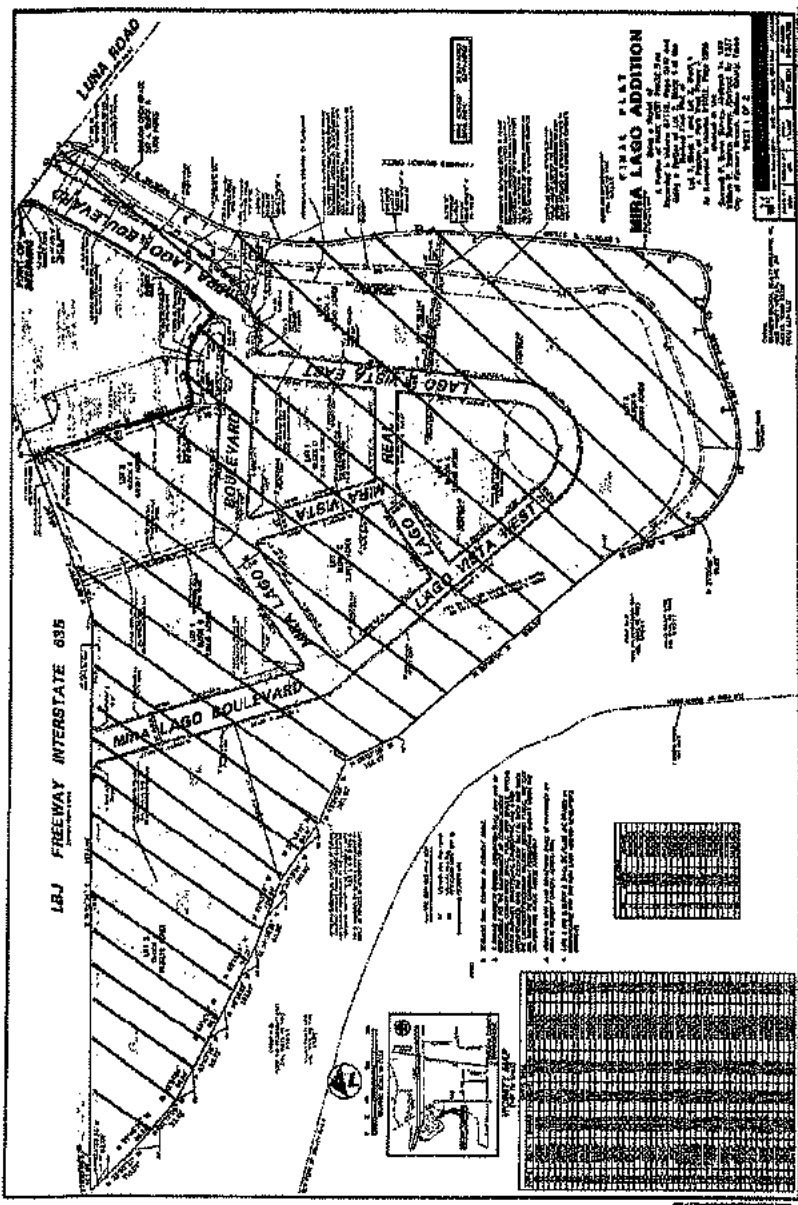


Exhibit "A"
Sheet 2 of 2

PROPERTY OF STATE OF TEXAS

DEPARTMENT OF REVENUE

PROPERTY TAX STATEMENT

2004-05

APPLICANT'S INFORMATION:
Name: [Redacted]
Address: [Redacted]
City: [Redacted]
County: [Redacted]

PROPERTY INFORMATION:
Address: [Redacted]
County: [Redacted]
Tract: [Redacted]

VALUATION:
Market Value: [Redacted]
Appraised Value: [Redacted]
Assessed Value: [Redacted]

TAXES:
Property Tax: [Redacted]
Special Tax: [Redacted]
Total Tax: [Redacted]

PAYMENT INFORMATION:
Due Date: [Redacted]
Payment Method: [Redacted]

SIGNATURES:
Assessor: [Redacted]
Applicant: [Redacted]

NOTICE OF APPEAL RIGHTS:
If you are dissatisfied with the value of your property, you may appeal to the Appraisal Review Board.

FINAL PLAY
MIRA LAGO ADDITION

A Final Plat of 2.5 Acres, more or less, located in Section 29112, Range 2311 S and Meridian 14 E, County of Tarrant, State of Texas, as shown on the attached plat, and being the same as shown on the attached plat.

As shown on the attached plat, the area to be platted is 2.5 Acres, more or less, and is bounded on the north by the line of the 29th Parallel, on the south by the line of the 30th Parallel, on the east by the line of the 14th Meridian, and on the west by the line of the 15th Meridian.

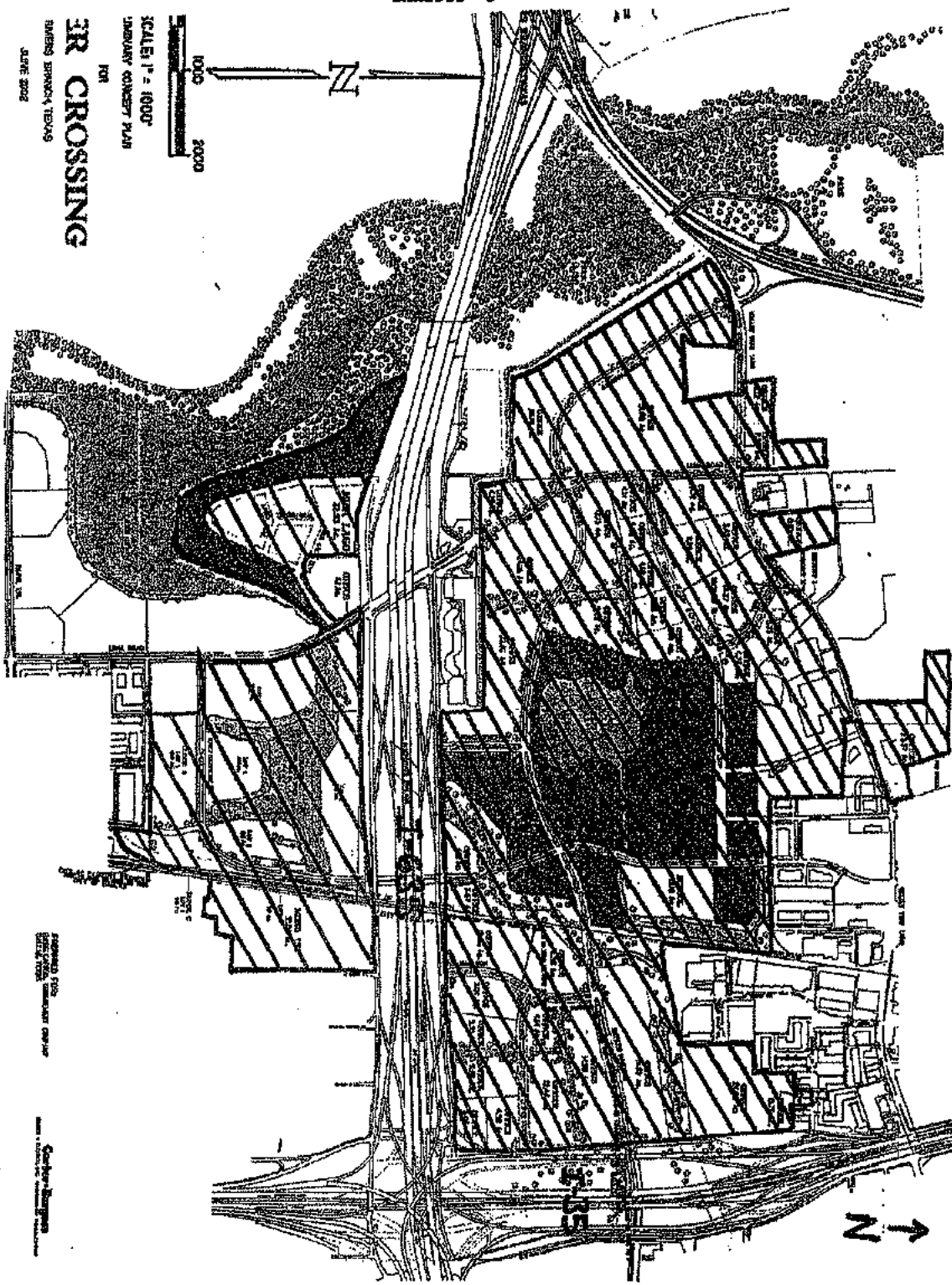
RECORDING INFORMATION:
Recorded in the Public Records Office of Tarrant County, Texas, on the 15th day of August, 2004, at 10:30 A.M.

By: [Redacted]
Recorder

APPLICANT'S INFORMATION	PROPERTY INFORMATION	VALUATION	TAXES	PAYMENT INFORMATION	SIGNATURES	NOTICE OF APPEAL RIGHTS
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2004 30 06 125

EXHIBIT "B"



SCALE 1" = 100'
LANDSCAPE ARCHITECT PLAN
FOR

RR CROSSING

BARBERS BURNICK, TEXAS
JUNE 2002

REVISIONS TO
DATE: 7/10/02

Copyright © 2002
Barbers Burnick

EXHIBIT "C"

Initial Restrictions and Rules

Land uses within the Properties shall conform to the requirements of and the restrictions set forth in any Supplemental Declaration, and any other applicable covenants or restrictions of record, all of which shall be enforceable as if fully incorporated in this Declaration. In addition, the following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Article X of the Declaration.

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

(a) Parking of trucks or other vehicles on any streets or thoroughfares, for delivery, loading, unloading or otherwise except in specially designated areas, if any;

(b) Any activity which tends to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(c) Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Unit or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Units, provided, nothing herein shall preclude normal and customary operation of any restaurant or hospital facility;

(d) Any activity which violates local, state or federal laws or regulations;

(e) Outside burning of trash, leaves, debris or other materials, unless properly permitted for clearing or construction purposes only;

(f) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that the Declarant and the Association shall have such right;

(g) Outdoor storage of goods, materials, or equipment, unless appropriately screened in a manner approved by Declarant or the ARC, except that (1) outdoor storage of building materials shall be permitted during construction on the Unit on which such materials are being stored; and (2) outdoor retail displays shall be permitted; and (3) and outdoor dining facilities shall be permitted;

2. Prohibited Conditions. The following shall be prohibited within the

Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties;

(b) Sprinkler or irrigation systems of any type which draw water from then existing creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Properties, except that the Association shall be entitled to draw water from such sources, pursuant to permits, for the purpose of irrigating the Area of Common Responsibility;

(c) Septic systems, other than those installed by or with the permission of Declarant, if any;

(d) Any fence, wall, hedge, or shrub planting which does or tends to create a traffic or sight problem;

(e) Tents, trailers or any structure of a temporary nature, such as a tent, shack, or utility shed, except for construction trailers during ongoing construction on the Unit and temporary party tents for special events approved by the Board in advance; and

(f) Overhead utility lines, except for temporary lines as required during construction and as may otherwise be required by law or safety considerations.

3. Prohibited Uses. In addition to uses which are restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Properties:

(a) Trailer courts, mobile home parks, and recreation vehicle campgrounds;

(b) Except as otherwise authorized by the Declarant in writing, oil, gas or mineral exploration, drilling, boring, development, refining, quarrying, or mining operations and all construction and equipment incident thereto, oil or gas wells, related equipment or facilities, excavations for minerals, and mine shafts, except that nothing herein shall preclude the operation of automobile service stations;

(c) Junk yards, scrap metal yards, automobile used parts and/or dismantling operations and sanitary landfills, except that nothing herein shall preclude recycling centers established solely for the collection and sorting of household recyclable materials;

(d) Commercial excavation of building or construction materials, except in the usual course of construction of improvements;

(e) Dumping, storage, disposal, incineration treatment, processing or reduction of garbage, or refuse of any nature;

(f) Lumberyards, sawmills, or outdoor storage of building or construction materials (except in the usual course of construction on the site where stored);

(g) Flea markets, and businesses which regularly engage in fire and bankruptcy sale operations;

(h) Truck terminals and truck stop-type facilities;

(i) Massage parlors, and businesses primarily engaged in the sale of obscene or pornographic materials or in the provision of entertainment featuring topless or nude performers; and

(j) Any heavy industrial use, as defined by the zoning code of any City, as it may be amended.

EXHIBIT "D"

Rules Of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").

2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").

3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the Dallas/Fort Worth chapter of The Community Associations Institute, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.

5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no post hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.