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MEADOWPARK

DECLARATION OF COVENANTS AND RESTRICTIONS AND PROVISIONS FOR
THE CARE AND MAINTENANCE OF COMMON AREAS AND FACILITIES

THIS DECLARATION, made this 12TH day of APRIL, 1979, by CITIZENS SAVINGS & LOAN ASSOCIATION, hereafter called Developer.

W I T N E S S E T H :

WHEREAS, Developer is the owner of the real property described in Article II of this declaration and desires to create thereon the first section of Meadowpark as a Planned Development, as more specifically defined in the City of Midland Zoning Ordinance, with permanent recreation areas, playgrounds, open spaces, and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said recreation areas, playgrounds, open spaces, and other common facilities and, to this end, desires to subject the real property described in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer will incorporate under the laws of the State of Texas, as a non-profit corporation, the MEADOWPARK OWNERS ASSOCIATION, INC., for the purpose of exercising these functions;

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NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may bereafter be made pursuant to Article II hereof, is, and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Meadowpark Owners Association, Inc., and its successors and assigns.

(b) "Book of Resolutions" shall mean and refer to the document containing the rules, regulations, and policies of the Association as they may from time to time be amended.

(c) "Cluster" shall mean and refer to a group of Lots or Living Units fronting onto a Cluster Common Area, all of which are subject to the same Supplementary Declaration establishing such cluster.

(d) "Cluster Common Area" shall mean and refer to portions of the Common Area which are designated as Cluster Common Area in the Governing Documents and which are intended primarily for the use and enjoyment of Members residing in such Cluster.

(e) "Common Area" shall mean and refer to all real property and improvements thereon owned or leased by the Association or over which the Association has an easement for maintenance (excepting lots and dwelling units thereon) for the use and enjoyment of the Members. The Common Area to be owned by the Association at the time of the conveyance of the first Lot to an Owner who is not the Developer or a Participating Builder is described in Exhibit A hereto. Streets and service drives dedicated to public use are not a part of the Common Areas.

(f) "Declaration" shall mean and refer to the covenants, conditions and restrictions and all other provisions herein set forth in this entire document, as they may from time to time be amended.

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(g) "Developer" shall mean and refer to Citizens Savings & Loan Association and its successors and assigns; provided, however, that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment or unless such rights and obligations pass by operation of law. The rights and obligations set forth herein of the Developer shall cease when new Living Unit construction contemplated by the General Plan of Development is substantially complete or after five years have lapsed since the filing of the last Supplementary Declaration establishing a Cluster. In the event another than the first Developer comes to stand in the same relation to the project as the first Developer, that Developer shall hold the same rights and obligations as would then have been held by the first Developer.

(h) "Fence" shall mean and refer to a structure enclosing a Lot to provide privacy, prevent escape from within, or intrusion from without, or to mark a boundary; and a wall as defined herein may constitute a portion of a fence.

(i) "Founding Documents" shall mean and refer to the Articles of Incorporation of the Association, this Declaration, Supplementary Declarations, and the Association Bylaws, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.

(j) "General Plan of Development" shall mean and refer to the total general scheme of intended uses of land in the Properties approved by the City of Midland, as illustrated in Exhibit B hereof, as may be amended from time to time, and as further defined in Article II, Section 3.

(k) "Governing Documents" shall mean and refer collectively and severally to the Founding Documents and the Book of Resolutions, as such may be amended from time to time.

(l) "Living Unit" shall mean and refer to any portion of a structure situated upon the Properties and designed and intended for use and occupancy as a residence by a Single Family.

(m) "Lot" shall mean and refer to any plot of land shown on any recorded subdivision map of the Properties, with the exception of Common Area as hereinbefore defined, and public dedications of rights-of-way.

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(n) "Members" shall mean and refer to members of the Association, which shall consist of all Owners and all Occupants, except that Participating Builders shall not be members.

(o) "Notice" shall mean and refer to written notice delivered personally or mailed to the last known address of the intended recipient.

(p) "Occupant" shall mean and refer to an occupant of a Living Unit who is the Owner or contract purchaser or lessee or sublessee who holds a written lease having an initial term of at least twelve months.

(q) "Owner" shall mean and refer to the recorded holder of the fee simple title to any Lot, whether one or more persons or entities.

(r) "Participating Builder" shall mean and refer to a person or entity who, or which, acquires a portion of the Properties for the purpose of improving such portion in accordance with the General Plan of Development for resale to future Owners.

(s) "Properties" shall mean and refer to all real property which is hereby subjected to the Declaration, together with such other real property, as may from time to time be annexed thereto, under the provisions of Article II hereof.

(t) "Residential Dwelling" shall mean and refer to Living Unit, garage and other outbuildings appurtenant thereto.

(u) "Single Family" shall mean and refer to a single housekeeping unit which includes not more than three adults who are legally unrelated, together with their legal children.

(v) "Supplementary Declaration" shall mean and refer to any declaration of covenants and restrictions which may be recorded by the Developer, which extends the provisions of this Declaration to a Cluster or which contains such complementary provisions for such Cluster as are deemed appropriate by the Developer and/or as are herein required.

(w) "Wall" shall mean and refer to the sides of a residential dwelling connecting the foundation to the roof.

(x) "Zoning Ordinance" shall mean the provisions pertaining to Planned Developments contained in the City of Midland Zoning Ordinance, as amended from time to time, and as such shall be applicable to the Properties.

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ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION:

ADDITIONS THERETO

Section 1. Existing Property. The real property which is and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Midland, Midland County, Texas, and is more particularly described as follows:

> Meadowpark, Section 1, being an Addition to the City of Midland, Midland County, Texas.

All of which real property shall hereinafter be referred to as "Existing Property."

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions by the Developer. The Developer shall have the right to subject to the Declaration any additional property which lies within the land area represented by the General Plan of Development as it may be amended from time to time, provided that not more than five (5) years has lapsed since the filing of the last Supplementary Declaration which subjects a Cluster to this Declaration. Upon request of the Association, the Developer shall provide a statement which shall set forth an estimate of the net additional operating costs expected to result from the annexation and an estimate of the expected user load, if any, upon existing developed recreational facilities.

(b) Other Additions. Additional land, other than that described in the General Plan of Development, may be annexed to the Properties upon approval of seventy-five (75) percent of the votes of the Owners.

The additions authorized under subsections (a) and (b) shall be made by complying with the requirements of the Zoning Ordinance, by filing of record one or more Supplementary Declarations of covenants and restrictions with respect to the additional property, and by filing with the Association the preliminary plat of such additions.

Section 3. The General Plan of Development.

(a) Purpose. The General Plan of Development, illustrated in Exhibit B, is the dynamic design for the staged development of the Properties as a Planned Development which will be regularly modified and amended, as provided herein, during the several years required to build the community.

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Because the General Plan of Development is a temporary design, it shall not bind the Developer to make any of the additions to the Properties which are shown on the General Plan of Development or to improve any portions of such lands in accordance with the General Plan of Development unless and until a Supplementary Declaration is filed by the Developer subjecting such property to this Declaration. Thereupon, the Developer shall be obligated to complete development of such Cluster or Clusters in accordance with the General Plan of Development currently in effect, unless the Members by a vote of seventy-five (75) percent of the outstanding votes, and the City of Midland consent to a change.

(b) Amendments. The Developer hereby reserves the right to add land to or amend the General Plan of Development for lands which have not yet been made subject to this Declaration; in response to changes in technological, economic, environmental, or social conditions related to the development or marketing of the Properties or in response to changes in requirements of government agencies and financial institutions. Such amendments shall be effected by (1) giving Notice of the proposed changed to the Association, and (2) securing the approval of the City of Midland.

Section 4. Merger. In accordance with its Articles of Incorporation, the property, rights, and obligations of an association similar in corporate nature and purposes may by operation of law be added to the property, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration within the Properties except as hereinafter provided. Such a merger or consolidation shall require the assent of seventy-five (75) percent of the outstanding votes of the Members.

ARTICLE III

PROTECTIVE COVENANTS

The following restrictions are imposed as a common scheme upon the Lots and Common Areas for the benefit of each other Lot and Common Area and may be enforced by any Owner occupant of a Lot or Living Unit:

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Section 1. Completion of Structures. Once approval of the Architectrual Control Committee (ACC, as set forth in Article VI of this document) is obtained and construction is begun on any structure, work therein must be prosecuted deligently and the said structure must be completed within a reasonable time. No structures shall be occupied during their construction. Garages and outbuildings may be constructed prior to construction of the Living Unit, but no more than ninety (90) days may elapse between the completion of any grage or outbuilding and the commencement of construction of the Living Unit. For purposes of this Section, a "reasonable time" shall be such time as is allowed by the ACC. During consideration of the plan for any structure, the ACC shall fix a period to be a reasonable time within which the said structure shall be completed. Upon sufficient proof of extenuating circumstances beyond the control of the party constructing such structure, the ACC may allow such extensions of time as it deems to be reasonably necessary.

Section 2. Building and Use Restrictions.

(a) No Lot shall be used other than for Single Family residential purposes, however, the Developer may use one or more Lots for a temporary office building or model unit during the development and sale of the Lots. No structure shall be permitted on any Lot other than one (1) Single Family residence and related facilities deemed appropriate by the ACC. Each residence shall have an enclosed two car garage, either attached or detached from the main Living Unit. Not more than sixty-seven (67) percent of the total area of a Lot may be covered by the first floor of all structures of any kind upon the Lot, including garages. Exterior walls of any Living Unit shall consist of not less than sixty (60) percent masonry construction and any exterior wall along a Zero Side Lot Line shall be one hundred (100) percent masonry construction. Painting of exterior masonry walls is prohibited. So called "Substandard Mexican Brick" shall not be permitted as a masonry product in the construction of any residential dwelling.

(b) No fence upon any lot shall be constructed of wire, and all fences constructed shall be of such materials as approved by the ACC.

(c) No structure of a temporary character, trailer, mobile home, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently, except during construction.

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(d) No clothesline, drying yard, service yard, woodpiles or storage areas shall be so located as to be visible from a street, road, service drive or Common Area.

(e) Any exterior lighting installed on any Lot shall be either indirect or of such controlled focus and intensity as not to disturb the residents of adjacent Lots.

(f) No building material of any kind or character shall be placed upon any Lot except in connection with construction approved as provided in Article VI.

(g) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

(h) No signs of any character shall be allowed on any Lot except one sign of not more than five (5) square feet advertising the property for sale or rent; provided, however, that the Developer and any other person or entity engaged in the construction and sale of residences within the Properties shall have the right, during the construction and sales period, to construct and maintain such facilities as are approved by the ACC and as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas, and model units.

(i) No oil well drilling, oil refining, quarrying, or mining operations of any kind shall be permitted on any of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any of the Properties. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained, or permitted on any of the Properties.

(j) No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no garbage, refuse, rubbish or cuttings shall be deposited on any street, road, service drive, or Common Area. All garbage and other waste shall be kept in suitably located sanitary containers, and such containers shall be maintained in a clean and sanitary condition at all times.

(k) No animal, livestock or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, or other common household pets in reasonable numbers may be kept, provided that they are not kept, bred, or

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maintained for any commercial purpose. No pets shall be permitted to run loose upon the Common Area, and any Owner who causes any animal to be brought upon the Properties shall indemnify and hold harmless the Association for any loss, damage or liability which the Association may sustain as a result of the presence of such animal on the Properties, whether or not the Association has given its permission therefor.

(l) No truck in excess of 3/4 ton, bus, trailer, camper, boat or commercial vehicle, either motorized or non-motorized, shall be parked or maintained on the Properties unless such vehicle be parked within an enclosed garage and be concealed from public view. This restriction shall not prohibit trucks or commercial vehicles making pick-ups or deliveries to or on the Properties which are necessary for the construction or maintenance of Residential Dwellings or of the Common Areas.

(m) No professional, business or commercial activity to which the general public is invited shall be conducted on any Lot.

(n) No vehicle of any size which transports inflammable or explosive cargo may be parked or kept in "Meadowpark" at any time.

(o) No television or radio antenna or tower shall be erected upon any Lot or building unless prior approval is obtained from the ACC.

Section 3. Mailboxes and Newspaper Tubes. Each Owner or occupant of a Living Unit shall be responsible for providing his own mailbox. The receiving and delivering of mail by the United States Postal Service to each Living Unit shall take place in the alley (service drive) adjacent to each Living Unit. The Common Area located between the Rear Lot Line and the edge of the alley pavement shall be the approved area for the placement of a mailbox; provided, however, that no part of the mailbox or its supporting structure shall extend over the alley pavement. The mailbox and its supporting structure shall not exceed a height of four (4) feet measured from the ground to the top of the mailbox. The Association shall not be liable for damages to any mailbox by virtue of the mailbox being located in the Common Area.

Section 4. Building Lots and Lot Lines. Building Lots shall be as shown on the recorded Plat of the subdivision. Front, Rear, Side, and Zero Lot Lines of each Lot are labeled on the subdivision Plat and designated as F.L.L. (Front Lot Line), R.L.L. (Rear Lot Line), S.L.L. (Side Lot Line), and Zero Side Line (Z.L.L.) thereon.

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Section 5. Setback Requirements. At any point on a Zero Side Line Lot, as hereinafter defined, where adjacent Living Units and/or garages or portions thereof are detached, a minimum setback of three (3) feet shall be observed from the Zero Side Line where the structures are not adjacent to the Zero Side Line; provided, however, that the minimum distance between exterior walls of adjacent structures that are detached at any point along said Zero Side Line shall be ten (10) feet. Garage openings shall be not less than twelve and one-half (12-1/2) feet from any alley right-of-way line, or the part of such alley which such garage faces. Any part of a wall between the Front and Rear Lot Lines may be a wall of the Living Unit or garage, but no part of any such Living Unit or garage shall extend beyond any Lot Line, except as provided in Article VIII, Section 1. The Owner of a Lot may build a temporary fence on the Zero Side Line if the Owner of the Lot adjoining such Zero Side Line shall not have commenced construction upon such adjoining Lot. The design of such temporary fence shall be subject to approval of the Architectural Control Committee. The Owner erecting such fence or his successor in ownership of the Lot shall remove such fence within fifteen (15) days after written notice from the Architectural Control Committee that the adjoining Owner is commencing construction.

Section 6. Zero Side Line Lots. Each of the Lots, except for Lot 19, Cluster 10, and Lot 34, Cluster 12, has at least one Lot line designated as a Zero Side Line, also designated as Z.L.L. on the Plat. Each Lot having a Zero Side Line is hereinafter called a Zero Side Line Lot. It is intended that the improvements to be placed upon each Lot having a Zero Side Line will be such as to afford privacy to the Lot immediately adjoining the Zero Side Line (hereinafter called the Adjoining Lot). The following provisions shall apply to such Zero Side Line, the Zero Side Line Lots and Adjoining Lots.

(a) The Owner of a Zero Side Line Lot shall, at the time of constructing a residence upon such Lot, construct a wall or fence not less than six (6) feet tall along the entire Zero Side Line from the Front Lot Line to the Rear Lot Line as provided above.

(b) Any part of such wall between the Front and Rear Lot Lines may be a

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wall of the Living Unit or garage upon the Lot, and that part of such wall, if any, may be an extension of such wall, but no part of such Living Unit or garage shall extend beyond such Front and Rear Lot Line. To the extent that such wall constitutes all or any part of a wall of the Living Unit or garage upon the Lot, it may be two and one-half stories in height; however, that portion which is not part of a wall of the Living Unit or garage will be only a fence and shall not be over eight (8) feet high.

(c) Such wall, regardless of its height, shall be without windows, doors or other openings, and shall be of solid design so as completely to avoid visibility through any part thereof.

(d) The Living Unit on the Zero Side Line Lot will have no windows or doors facing the Zero Side Line unless each such window or door is set back from the Zero Side Line a minimum distance of ten (10) feet.

(e) The Owner of each Zero Side Line Lot shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon such Lot (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Lot.

(f) Eaves of any structure upon a Zero Side Line Lot may extend not more than one (1) foot over such Zero Side Line into the Adjoining Lot. No part of any such eave may be less than seven (7) feet from the ground.

(g) The Owner of such Zero Side Line Lot is hereby granted an easement upon the Lot adjacent to the Zero Side Line (Adjoining Lot) upon a strip of land six (6) feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any eave described above and/or any wall or fence along the Zero Side Line. The Owner of the Adjoining Lot will have the right to use and enjoy the area subject to such easement and shall maintain such area, but will not place any structures or improvements, within such easement which would unreasonably interfere with such building, maintenance, repair or replacement by the Adjoining Zero Side Line Lot Owner. Where portions of a Living Unit or garage occupy all or part of said easement, that portion of the easement being occupied by said Living Unit or garage is hereby voided. The Zero Side Line Lot Owner will be liable to the Adjoining Lot Owner for any damage to the Adjoining Lot caused by the use of such easement. The Adjoining Lot Owner may construct a fence extending to the neighboring Zero Side Line, but any such fence shall have a gate

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or easily removable section not less than four (4) feet wide within the six (6) foot strip covered by this easement.

(h) Eaves adjacent to the Front, Rear and Side Lot Lines may overhang not more than two and one-half (2-1/2) feet into the Common Area adjacent to such Lot Line.

Section 8. Merger of Lots. When two or more adjacent Lots are purchased for use as a single Residential Dwelling, all interior Lot line requirements, such setbacks, walls or easements shall be automatically waived as between the two or more contiguous Lots purchased.

ARTICLE IV

PARTY WALLS AND FENCES

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Living Units upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of the liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability or negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary portection against such elements.

Section 5. Right to Contributions Runs with Land. The right of any

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Owner due contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision of the majority of all of the arbitrators shall be final and conclusive of the question involved.

Section 7. Fences. Fences between Lots shall be treated as if they are party walls and the foregoing Section 1 through 6 shall be applicable thereto.

ARTICLE V

EXTERIOR MAINTENANCE OF LOTS AND LIVING UNITS

Section 1. Exterior Maintenance. In addition to maintenance upon the Common Areas, the Association shall, at the request of the Owner, provide exterior maintenance upon each Lot and Residential Dwelling which is subject to assessment under this Article as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

Section 2. Payment of Cost. The exterior maintenance of the Lot and Living Unit shall be requested by the Owner in writing. If the Board of Directors of the Association requires, the Owner shall execute and deliver a contract, promissory note and such other instruments as in the opinion of the Board or its attorney are reasonably necessary to fix a mechanic's and materialman's lien against the Owner's Lot or Living Unit prior to the time that any of the work is done. The note shall be payable as directed by the Board or as a part of the assessment or charge as provided in Article V.

Section 3. Assessment of Costs. The Board of Directors of the Association, when establishing the annual assessment against each Lot or Living Unit for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall thereafter make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

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Section 4. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner or occupant, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Saturday, Sunday or holidays.

Section 5. Maintenance Not Contracted to the Association. Each Owner of a Lot which has not requested the Association to provide maintenance on his Lot or Living Unit, as allowed for in the previous Sections, will mow his Lot, remove trash or debris therefrom, and otherwise properly maintain such at all times, before and after construction of any improvements thereon. He shall also maintain his Residential Dwelling in a good state of repair and condition consistent with the high quality provided for as defined and applied by the Architectural Control Committee. All lawn, plant materials and other landscape features on the Lot or within the Landscaping Easement described in Article VIII, shall be maintained in a healthy growing condition at all times, subject to seasonal variations.

ARTICLE VI

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Review by Committee. No building, porch, Living Unit, garage, carport, patio, driveway, swimming pool, fence, wall or other structure shall be commenced, erected, or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) calendar days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

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ARTICLE VII

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by Covenants of Record to assessment by the Association, shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation or as a Participating Builder shall not be a member.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership;

Class A. Class A members shall be all those Owners as defined in Section 1 with the exception of the Developer and the Participating Builder(s). Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot or Living Unit, all such persons shall be members, and the vote for such Lot or Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

Class B. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Section 1, and for every Living Unit owned by it until such Unit is first sold, provided that the Class B Membership shall cease and become converted to Class A Membership on the happening of one of the following events:

(a) When the total votes outstanding in Class A Membership equal the total votes outstanding in the Class B Membership.

(b) On March 1, 1984

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From and after the happening of this event, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Lot or Living Unit in which it holds the interests required for membership under Section 1.

ARTICLE VIII

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 hereof, every Member shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

(a) In addition, each Lot shall have a five (5) foot maintenance easement over and above that portion of the adjacent Common Areas to the extent the overhang of the eaves of the roof of the Living Unit, situated upon said Lot extends over the Common Areas.

(b) Each Lot Owner shall have a landscaping easement in the Cluster Common Area adjacent to his Lot. This landscaping easement shall extend five (5) feet into the Cluster Common Area adjacent to the Front Lot Line (F.L.L.), the Side Lot Line (S.L.L.), and the portion of the Zero Side Lot Line (Z.L.L.) which extends beyond the F.L.L. of the adjacent Lot. In compliance with Article V hereof, the Lot Owner shall be responsible for maintaining the landscape features in a healthy growing condition. Should any Lot Owner elect not to use this Landscaping Easement, either in whole or in part, the Association will plant the unused area in grass and maintain such grass. The Association shall not be liable for damages to any landscaping features resulting from causes beyond the Association's control.

(c) Any member may delegate, in accordance with the Bylaws, his right and easement of enjoyment of the Common Areas and facilities to the members of his family, his tenants or contract purchasers who reside on the premises and guests in residence.

The Association has the right to limit the use of Common Areas and facil-

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ities by guests of members, and, it is the intent of the Association to preclude the use by guests unless accompanied by a Member.

(d) The Developer shall have full rights of egress and ingress to and through, over and under the Common Areas during such period of time as the Developer is engaged in any construction or improvement work on or within such Common Areas, and shall further have rights thereon for the purpose of storage of construction materials and equipment and like articles of personal property utilized in construction; and may use any portion thereof as a construction and/or sales office until all Lots are sold.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same; however, notwithstanding any provisions contained herein, the Developer hereby covenants for itself, its successors and assigns that the Common Areas shall be conveyed to the Association, free and clear of all liens and encumbrances, not later than March 1, 1984.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage, the Lenders' rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continue the enjoyment by the Members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied; whereupon, the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure; and

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the right of easement and enjoyment of any Member for any period during which any assessment remains unpaid, and for any period not to exceed

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thirty (30) calendar days for any infraction of its published rules and regulations by such Member or any of his delegatees; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Areas and to prescribe rules and regulations for the use, enjoyment and maintenance of the Common Areas and facilities thereon; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members and the grantee, provided that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds (2/3) of the voting Members of each voting class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) calendar days in advance of any action taken.

Section 4. Parking Rights. The Association shall maintain upon the Common Areas at least two (2) parking spaces for each Lot or Living Unit.

Those parking spaces situated in any given Cluster shall be for the primary use of the Members residing in such Cluster, their families and guests. Repeated use of the parking spaces in any given Cluster by Members residing in adjoining or other Clusters, their families, guests or tenants, to the detriment of the residents of the subject Cluster shall be grounds for suspension of the right and easement of enjoyment of the Member or Members so using such spaces.

ARTICLE IX

COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Developer, for each Lot owned by it within The Properties, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefore, whether or not it shall be so expressed in any such Deed or other conveyance, is deemed to covenant and agrees to pay the Association:

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(1) Annual assessments or charges; and

(2) Special assessments for capital improvements;

such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon The Property against which such assessment is made.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in The Properties, including, but not limited to, the payment of taxes and insurance thereon, repair, replacement, and additions thereto, and for the costs of labor, equipment, materials, management and supervision thereof, particularly to Common Area.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning March 1, 19 80, the annual assessments shall be $0.00 ______________ dollars per Lot. From and after March 1, 1980, the annual assessment may be increased by a simple majority vote of the Members voting thereon, as hereinafter provided, for the next year. Assessment increases may be voted on only once per calendar year, and only during the annual meeting of the entire Association, in which the Board of Directors has, within thirty (30) calendar days prior thereto, presented a proposed budget for the coming year to each Member of each class of membership for review.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at an amount less than the proposed amount, without a vote of the Association membership.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, provided that any such assess-

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ment shall have the assent of two-thirds (2/3) of the votes of each class of Members, voting in person or by proxy at a meeting duly called for this purpose, notice of which shall be sent to all Members at least thirty (30) calendar days in advance and shall set forth the purpose of the meeting.

Section 5. Date of Commencement of Annual Assessments and Special Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year after the first year, shall become due and payable on the first day of March of each year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same re-decution in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 6. Duties of the Board of Directors: Assessments. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Living Unit for each assessment period at least thirty (30) calendar days in advance of such date or period and shall, at that time, prepare a roster of The Properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessments shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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Section 7. <u>Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association</u>. If the assessments are not paid on the date when due (being the date specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in the title unless expressly assumed by them.

If the assessment is not paid within thirty (30) calendar days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment, all costs and reasonable attorney's fees incurred in collection thereof; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 8. <u>Subordination of the Lien to Mortgages</u>. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 9. <u>Exempt Property</u>. The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

(a) All properties to the extent of any easement or other interest

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therein dedicated and accepted by the local public authority and devoted to public use; and

(b) All Common Areas as defined in Article I, Section 1, hereof.

Notwithstanding any provisions herein, no land or improvements devoted to Residential Dwelling use shall be exempt from said assessments, charges or liens.

ARTICLE X

UTILITY EASEMENTS

Section 1. Reservation of Easements. All easements in or adjacent to alleys (service drives) and streets for the installation, maintenance, repair, or removal of any utility are as indicated on the recorded plat; and appurtenant to such easements is the right to remove any obstruction which would constitute interference with the use, maintenance, operation, or installation of such utility. No utility company, water district, political subdivision, or other authorized entity using the easements herein referred to shall be liable for any damage done by them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or to other property of the Owner situated within any such easement.

Section 2. Underground Electric System. An underground electric distribution system will be installed to serve all Lots in the development. The Owner of each Lot shall, at his own cost and expense, furnish, install, own and maintain (all in accordance with the requirements of the local governmental authorities) an underground service cable and appurtenances from the meter installed upon the Lot by the electrical company to such point as may be designated by such company on the property line of such Lot. The company furnishing electrical service shall make the necessary connections at the property line and at the meter. Each Owner shall also install, furnish, own, and maintain at his own cost and expense a meter loop (in accordance with the then current standards and specifications of the electric company) for the Residential Dwelling constructed on the Lot. For so long as underground service is maintained, the electric service to each Lot shall be uniform in character.

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ARTICLE XI

GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots or Living Units has been recorded, agreeing to change said covenants and restrictions in whole or in part. Provided, however, that no such agreement to change shall be effective unless the prior written consent of all parties holding recorded liens securing repayment of debt incurred or assumed by an Owner is first obtained, and unless written notice of the proposed agreement is sent to every Owner at least thirty (30) calendar days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other pro-

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