

4914 1075

2001-0053523

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
ABBEY HILL PARK**

Allen, Collin County, Texas

Declarant

D. R. Horton - Texas, Ltd.

4914 1076

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
ABBAY HILL PARK**

TABLE OF CONTENTS

	PAGE
ARTICLE 1 - <u>DEFINITIONS</u>	1
ARTICLE 2 - <u>PROPERTY SUBJECT TO DOCUMENTS</u>	3
2.1. PROPERTY	3
2.2. ADDITIONAL PROPERTY	3
2.3. PLAT DEDICATIONS, EASEMENTS & RESTRICTIONS	3
2.4. COMMON AREA	3
2.5. STREETS WITHIN PROPERTY	4
ARTICLE 3 - <u>PROPERTY EASEMENTS AND RIGHTS</u>	4
3.1. GENERAL	4
3.2. EASEMENT FOR ENTRY FEATURE & SCREENING WALL	5
3.3. OWNER'S EASEMENT OF ENJOYMENT	5
3.4. OWNER'S INGRESS/EGRESS EASEMENT	5
3.5. ASSOCIATION'S ACCESS EASEMENT	6
3.6. UTILITY EASEMENT	6
3.7. RIGHTS OF CITY	6
3.8. SECURITY	6
3.9. RISK	6
ARTICLE 4 - <u>ARCHITECTURAL COVENANTS AND CONTROL</u>	7
4.1. PURPOSE	7
4.2. ARCHITECTURAL CONTROL COMMITTEE	7
4.3. LIMITS ON LIABILITY	7
4.4. PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT ...	7
4.5. ACC APPROVAL	7
4.6. ACC GUIDELINES	8
ARTICLE 5 - <u>CONSTRUCTION AND USE RESTRICTIONS</u>	8
5.1. VARIANCE	8
5.2. CONSTRUCTION RESTRICTIONS	8
5.3. ASSOCIATION'S RIGHT TO PROMULGATE RULES	8
5.4. ACCESSORY SHEDS	9
5.5. ANIMAL RESTRICTIONS	9
5.6. ANNOYANCE	9
5.7. APPEARANCE	9
5.8. DRAINAGE	10
5.9. DRIVEWAYS	10

4914 1077

5.10.	FIRES	10
5.11.	GARAGES	10
5.12.	GUNS	10
5.13.	HOOPS	10
5.14.	LANDSCAPING	10
5.15.	LEASING OF HOMES	10
5.16.	NOISE & ODOR	11
5.17.	OCCUPANCY	11
5.18.	RESIDENTIAL USE	11
5.19.	SCREENING	11
5.20.	SIGNS	11
5.21.	TELEVISION	11
5.22.	TEMPORARY STRUCTURES	12
5.23.	VEHICLES	12
5.24.	WINDOW TREATMENTS	12
ARTICLE 6 - ASSOCIATION AND MEMBERSHIP RIGHTS		12
6.1.	BOARD	12
6.2.	THE ASSOCIATION	13
6.3.	GOVERNANCE	13
6.4.	MEMBERSHIP	13
6.5.	VOTING	13
6.6.	VOTING BY CO-OWNERS	13
6.7.	BOOKS & RECORDS	14
6.8.	INDEMNIFICATION	14
6.9.	OBLIGATIONS OF OWNERS	14
6.10.	TRANSFER-RELATED FEES	15
ARTICLE 7 - COVENANT FOR ASSESSMENTS		15
7.1.	PURPOSE OF ASSESSMENTS	15
7.2.	PERSONAL OBLIGATION	15
7.3.	CONTROL FOR ASSESSMENT INCREASES	15
7.4.	TYPES OF ASSESSMENTS	16
7.5.	BASIS & RATE OF ASSESSMENTS	17
7.6.	ANNUAL BUDGET	18
7.7.	DUE DATE	18
7.8.	RESERVE FUNDS	18
7.9.	ASSOCIATION'S RIGHT TO BORROW MONEY	18
7.10.	ASSESSMENT LIEN	18
7.11.	LIMITATIONS OF INTEREST	20
ARTICLE 8 - EFFECT OF NONPAYMENT OF ASSESSMENTS AND VIOLATION OF THE DOCUMENTS		20
8.1.	COLLECTING DELINQUENT ASSESSMENTS	20
8.2.	ENFORCING THE DOCUMENTS	21
8.3.	NOTICE AND HEARING	22

4914 1078

ARTICLE 9 - MAINTENANCE AND REPAIR OBLIGATIONS	22
9.1. ASSOCIATION MAINTAINS	22
9.2. OWNER RESPONSIBILITY	23
9.3. OWNER'S DEFAULT IN MAINTENANCE	23
ARTICLE 10 - INSURANCE	24
10.1. GENERAL PROVISIONS	24
10.2. PROPERTY	24
10.3. GENERAL LIABILITY	24
10.4. DIRECTORS & OFFICERS LIABILITY	24
10.5. OTHER COVERAGES	25
10.6. OWNER'S RESPONSIBILITY FOR INSURANCE	25
ARTICLE 11- MORTGAGEE PROTECTION	25
11.1. INTRODUCTION	25
11.2. KNOWN MORTGAGEES	25
11.3. ELIGIBLE MORTGAGEES	25
11.4. MORTGAGEE RIGHTS	26
11.5. INSURANCE POLICIES	26
ARTICLE 12 - AMENDMENTS	26
12.1. CONSENTS REQUIRED	26
12.2. METHOD OF AMENDMENT	26
12.3. EFFECTIVE	27
12.4. DECLARANT PROVISIONS	27
12.5. MERGER	27
12.6. TERMINATION	27
12.7. CONDEMNATION	27
ARTICLE 13 - DISPUTE RESOLUTION	27
13.1. INTRODUCTION & DEFINITIONS	27
13.2. MANDATORY PROCEDURES	28
13.3. NOTICE	28
13.4. NEGOTIATION	29
13.5. MEDIATION	29
13.6. TERMINATION OF MEDIATION	29
13.7. ALLOCATION OF COSTS	29
13.8. ENFORCEMENT OF RESOLUTION	29
13.9. GENERAL PROVISIONS	29
ARTICLE 14 - GENERAL PROVISIONS	30
14.1. COMPLIANCE	30
14.2. HIGHER AUTHORITY	30
14.3. NOTICE	30
14.4. LIBERAL CONSTRUCTION	30
14.5. SEVERABILITY	30
14.6. CAPTIONS	30

4914 1079

14.7. APPENDIXES	30
14.8. INTERPRETATION	31
14.9. DURATION	31
14.10. PREPARER	31
SIGNED AND ACKNOWLEDGED	31
APPENDIX A - DESCRIPTION OF SUBJECT LAND	
APPENDIX B - CONSTRUCTION SPECIFICATIONS	
APPENDIX C - <u>DECLARANT REPRESENTATIONS & RESERVATIONS</u>	C-1
C.1. GENERAL PROVISIONS	C-1
C.2. DECLARANT CONTROL PERIOD RESERVATIONS	C-2
C.3. DEVELOPMENT PERIOD RESERVATIONS	C-3
C.4. WORKING CAPITAL FUND	C-5
C.5. SUCCESSOR DECLARANT	C-6

4914 1080

**DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
ABBEY HILL PARK**

This Declaration of Covenants, Conditions & Restrictions for Abbey Hill Park is made by D. R. Horton - Texas, Ltd., a Texas limited partnership ("Declarant"), on the date signed below. Declarant owns the real property described in Appendix A of this Declaration, together with the improvements thereon.

Declarant desires to develop the real property with a residential community to be known as Abbey Hill Park. Declarant further desires to provide for the preservation and maintenance of portions of Abbey Hill Park, and to protect the value, desirability, and attractiveness of Abbey Hill Park. Declarant deems it advisable to create an association to perform these functions and activities more fully described in this Declaration.

Declarant hereby declares that the real property described in Appendix A is subject to this Declaration.

**ARTICLE 1
DEFINITIONS**

DEFINITIONS. The following words and phrases, whether or not capitalized, have specified meanings when used in the Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

- 1.1. "ACC" means the Architectural Control Committee of the Association.
- 1.2. "Assessment" means any charge levied against a lot or owner by the Association, pursuant to the Documents or State law.
- 1.3. "Association" means the association of owners of all lots in the Property, initially organized as Abbey Hill Park Owners Association, a Texas nonprofit corporation, and serving as the "property owners' association" defined in Section 202.001(2) of the Texas Property Code. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Declaration and the bylaws.
- 1.4. "Board" means the board of directors of the Association.
- 1.5. "City" means the City of Allen, Collin County, Texas, in which the Property is located.

4914 1081

1.6. "Common Area" means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Section 2.4 below.

1.7. "Declarant" means D. R. Horton - Texas, Ltd., a Texas limited partnership, which is developing the Property, or the successors and assigns of D. R. Horton - Texas, Ltd., which acquire any portion of the Property for the purpose of development and which are designated a Successor Declarant by D. R. Horton - Texas, Ltd., or by any such successor and assign, in a recorded document.

1.8. "Declarant Control Period" means that period of time, beginning the date this Declaration is recorded, during which Declarant controls the operation of the Association, pursuant to Appendix C of this Declaration.

1.9. "Declaration" means this document, as it may be amended from time to time.

1.10. "Development Period" means the 12-year period beginning the date this Declaration is recorded, during which the Property is being developed, constructed, expanded, or marketed. The Development Period terminates automatically when a dwelling is constructed and completed on every lot that may be created in the Property. Declarant may terminate the Development Period at any time by recording a notice of termination.

1.11. "Documents" means, singly or collectively as the case may be, this Declaration, the Plat, the bylaws, the Association's articles of incorporation, and the rules of the Association, as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is a part of that Document.

1.12. "Lot" means a portion of the Property intended for independent ownership, on which there is or will be constructed a dwelling, as shown on the Plat. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot.

1.13. "Majority" means more than half.

1.14. "Member" means a member of the Association, each member being an owner of a lot, unless the context indicates that member means a member of the board or a member of a committee of the Association.

1.15. "Owner" means a holder of recorded fee simple title to a lot. Declarant is the initial owner of all lots. Contract sellers and mortgagees who acquire title to a lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not owners. Every owner is a member of the Association.

1.16. "Plat" means all plats, singly and collectively, recorded in the Real Property Records of Collin County, Texas, and pertaining to Abbey Hill Park, a subdivision to the City of Allen, including all dedications, limitations, restrictions, easements, and reservations shown on the plat, as it may be amended from time to time. The initial plat, titled "Final Plat of Abbey Hill Park,"

4914 1082

was recorded on November 9, 2000, as Document No. 2000-0123392, in Cabinet M, Page 334, Plat Records, Collin County, Texas.

1.17. "Property" means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Abbey Hill Park. The Property is located on land described in Appendix A to this Declaration, and includes every lot and any common area thereon.

1.18. "Resident" means an occupant of a dwelling, regardless of whether the person owns the lot.

1.19. "Rules" means rules and regulations adopted by the board in accordance with the Documents.

1.20. "Underwriting Lender" means Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (HUD/PHA), Federal National Mortgage Association (Fannie Mae), or U. S. Department of Veterans Affairs (VA), singly or collectively. The use of this term and these institutions may not be construed as a limitation on an owner's financing options nor as a representation that the Property is approved by any institution.

ARTICLE 2 PROPERTY SUBJECT TO DOCUMENTS

2.1. **PROPERTY.** The real property described in Appendix A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the attached Appendix C, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

2.2. **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of owners representing at least two-thirds of the lots in the Property, or, during the Development Period, by Declarant as permitted in Appendix C. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the county's real property records.

2.3. **PLAT DEDICATIONS, EASEMENTS & RESTRICTIONS.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to the dedications, limitations, easements, restrictions, and reservations shown or cited on the plat, which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by the plat, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

2.4. **COMMON AREA.** The common area of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

4914 1083

- a. All of the Property, save and except the house Lots.
- b. The land described in Appendix A as common area and all improvements thereon, including Lot 19 of Block A.
- c. Any area shown on the plat as common area or an area to be maintained by the Association.
- d. The formal entrances to the Property, including (if any) the signage, landscaping, electrical and water installations, planter boxes and fencing on both sides of Arbor Ridge Drive at F.M. 2170.
- e. The screening walls, fences, or berms along the sides of the Property on F.M. 2170 and F.M. 2551.
- f. The grounds between F.M. 2170 and the screening walls, fences, or berms, to the extent that the Association has a right or duty to maintain or regulate that portion of the F.M. 2170 right-of-way.
- g. The grounds between F.M. 2551 and the screening walls, fences, or berms, to the extent that the Association has a right or duty to maintain or regulate that portion of the F.M. 2551 right-of-way.
- h. Any modification, replacement, or addition to any of the above-described areas and improvements.
- i. Personal property owned by the Association, such as books and records, office equipment, and supplies.

2.5. **STREETS WITHIN PROPERTY.** Because streets, alleys, and cul de sacs within the Property (hereafter "streets") are capable of being converted from publicly dedicated to privately owned, and vice versa, this Section addresses both conditions. Private streets are part of the common area, which is governed by the Association. Public streets are part of the common area only to the extent they are not maintained or regulated by the city or county. To the extent not prohibited by public law, the Association, acting through the board, is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of the streets -- whether public or private -- including but not limited to: (1) Identification of vehicles used by owners and residents and their and guests, (2) Designation of speed limits and parking or no-parking areas, (3) Removal or prohibition of vehicles that violate applicable rules and regulations, and (4) Fines for violations of applicable rules and regulations.

ARTICLE 3 PROPERTY EASEMENTS AND RIGHTS

3.1. **GENERAL.** In addition to other easements and rights established by the Documents, the Property is subject to the easements and rights contained in this Article.

4914 1084

3.2. EASEMENT FOR ENTRY FEATURE & SCREENING WALL. The Association is hereby granted a perpetual easement (the "Maintenance Easement") over each lot that abuts or contains a portion of the Property's formal entrances or the Property's screening wall, fence, or berm along F.M. 2170 or F.M. 2551, for the purposes stated in this Section, regardless of whether or how the plat shows the easement, entry features, or screening wall, fence, or berm. The lots hereby burdened with the Maintenance Easement include, but are not limited to, Lot 1 of Block A and Lot 1 of Block B, on which the F.M. 2170 screening wall and the formal entrance at Arbor Ridge Drive and F.M. 2170 are located.

3.2.1. Purpose of Easement. The purpose of the Maintenance Easement is to provide for the existence, repair, improvement, and replacement of the Property's formal entrances, and screening wall, fence, or berm, to be maintained by the Association as a common area. In exercising this Maintenance Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the screening or entrance of a residential subdivision, including: screening walls, fences and/or berms; planter beds, landscaping, and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to the Property.

**NOTICE
CERTAIN LOTS IN ABBEY HILL PARK
ARE SUBJECT TO A MAINTENANCE EASEMENT.**

3.2.2. Rights Reserved. The owners of the lots burdened with the Maintenance Easement will have the continual use and enjoyment of their lots for any purpose that does not interfere with and prevent the Association's use of the Maintenance Easement.

3.2.3. Temporary Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of a burdened lot as may be reasonably necessary for the Association to perform its contemplated work on the Maintenance Easement.

3.2.4. Duration, Termination & Assignment of Easement. This easement is perpetual. The Maintenance Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes impossible to perform. The Association may assign this easement, or any portion thereof, to the city if the city agrees to accept the assignment.

3.3. OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Documents, including the right of the Association to reserve the use of common areas for certain persons and purposes. An owner who does not occupy a lot delegates this right of enjoyment to the residents of his lot.

3.4. OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

4914 1085

3.5. **ASSOCIATION'S ACCESS EASEMENT.** The Association is granted an easement of access and entry to every lot and common area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

3.6. **UTILITY EASEMENT.** The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property; provided, however, this easement may not be exercised without prior notice to the board. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

3.7. **RIGHTS OF CITY.** The city, including its agents and employees, has the right of immediate access to the common areas at all times if necessary for the welfare or protection of the public, or for the preservation of public property. If the Association fails to maintain the common areas to a standard acceptable to the city, the city may give the Association a written demand for maintenance. If the Association fails or refuses to perform the maintenance within a reasonable period of time after receiving the city's written demand (at least 90 days), the city may maintain the common areas at the expense of the Association after giving written notice of its intent to do so to an owner of every lot. To fund the city's cost of maintaining the common areas, the city may levy an assessment against every lot in the same manner as if the Association levied a special assessment against the lots.

READERS, PLEASE PAY HEED TO THE NEXT 2 SECTIONS.

3.8. **SECURITY.** The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, the Association, and its directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, the Association, and its directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, the Association, and its directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

3.9. **RISK.** Each resident uses all common area amenities at his own risk. All common area amenities are unattended and unsupervised. Each resident is solely responsible for his own

4914 1086

safety and that of his guests. The Association disclaims any and all liability or responsibility for injury or death occurring from use of the common area amenities.

ARTICLE 4
ARCHITECTURAL COVENANTS AND CONTROL

4.1. **PURPOSE.** Because the lots are part of a single, unified community, the Association has the right to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements.

4.2. **ARCHITECTURAL CONTROL COMMITTEE.** The Architectural Control Committee (the "ACC") consists of 3 persons appointed by Declarant during the Development Period. After the Development Period, the ACC consists of 3 persons appointed by the board, pursuant to the bylaws, or, at the board's option, the board may act as the ACC. If the board acts as the ACC, all references in the Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents.

4.3. **LIMITS ON LIABILITY.** The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (1) errors in or omissions from the plans and specifications submitted to the ACC, (2) supervising construction for the owner's compliance with approved plans and specifications, or (3) the compliance of the owner's plans and specifications with city codes and ordinances, state and federal laws.

**BEFORE MAKING ANY IMPROVEMENT OR ALTERATION
TO A LOT OR DWELLING, A BUILDER OR OWNER
MUST APPLY FOR THE ACC'S PRIOR WRITTEN APPROVAL.**

4.4. **PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT.** Without the ACC's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another lot, or the common area. The ACC has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

4.5. **ACC APPROVAL.** To request ACC approval, an owner must make written application and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. The application must clearly identify any requirement of this Declaration for which a variance is sought. The ACC will return one set of plans and specifications to the applicant marked with the ACC's response, such as "Approved," "Denied," or "More Information Required." The ACC will retain the other set of

4914 1087

plans and specifications, together with the application, for the Association's files. Verbal approval by a director, officer, member of the ACC, or the Association's manager does not constitute ACC approval, which must be in writing.

4.5.1. Deemed Approval. If an owner has not received the ACC's written approval or denial within 60 days after delivering his complete application to the ACC, the owner may presume that his request has been approved by the ACC. The owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner.

4.5.2. No Approval Required. No approval is required to repaint exteriors in accordance with an ACC-approved color scheme, or to rebuild a dwelling in accordance with originally approved plans and specifications. Nor is approval required for an owner to remodel or repaint the interior of a dwelling.

4.5.3. Building Permit. If the application is for work that requires a building permit from the city, the ACC's approval is conditioned on the city's issuance of the appropriate permit. The ACC's approval of plans and specifications does not mean that they comply with the city's requirements. Alternatively, approval by the city does not ensure ACC approval.

4.6. ACC GUIDELINES. The Association may publish architectural restrictions, guidelines, and standards developed by the ACC, subject to revision from time to time, including revisions to reflect changes in technology, style, and taste. The Association, acting through the ACC, has the right to establish and enforce architectural restrictions, guidelines, and standards relating to every aspect of proposed or existing improvements on a lot, including but not limited to dwellings, fences, and landscaping, and further including replacements or modifications of original construction or installation.

ARTICLE 5

CONSTRUCTION AND USE RESTRICTIONS

5.1. VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The board or the ACC, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis, and may limit or condition its grant.

5.2. CONSTRUCTION RESTRICTIONS. Without the ACC's prior written approval for a variance, improvements constructed on every lot must have the characteristics described in Appendix B, which may be treated as the minimum requirements for improving and using a lot. The ACC and the board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his lot and dwelling.

5.3. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance,

4914 1088

appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of common areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of exteriors of dwellings and lots.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of dwellings.
- h. Animals.
- i. Vehicles.
- j. Disposition of trash and control of vermin, termites, and pests.
- k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

5.4. **ACCESSORY SHEDS.** Accessory structures, such as dog houses, gazebos, metal storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for the Property in terms of type, number, size, location, color, material, and height. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another lot is installed on a lot without the prior written approval of the ACC, the ACC reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

GET ACC APPROVAL BEFORE YOU SHOP FOR A STORAGE SHED.

5.5. **ANIMAL RESTRICTIONS.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots.

5.6. **ANNOYANCE.** No lot or common area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The board has the sole authority to determine what constitutes an annoyance.

4914 1089

5.7. **APPEARANCE.** Both the lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The ACC is the arbitrator of acceptable appearance standards.

5.8. **DRAINAGE.** No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board.

5.9. **DRIVEWAYS.** The driveway portion of a lot may not be used for any purpose that interferes with its ongoing use as a route of vehicular access to the garage. Without the board's prior approval, a driveway may not be used: (1) for storage purposes, including storage of boats, trailers, and inoperable vehicles; or (2) for repair or restoration of vehicles.

5.10. **FIRES.** Except for barbecue fires, no exterior fires on the Property are permitted.

5.11. **GARAGES.** Without the board's prior written approval, the original garage area of a lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

5.12. **GUNS.** Hunting and shooting are not permitted anywhere on or from the Property.

5.13. **HOOPS.** Without the ACC's prior written approval, basketball goals and other recreational or sporting equipment may not be used, attached, mounted, or installed in a front yard, on a front driveway, in an unfenced portion of a side yard, or on the street side exterior portion of a dwelling. This prohibition also applies to portable goals and equipment. If the ACC grants approval for such equipment, the approval may be revoked if the equipment is not maintained or used, or if it becomes unsightly.

5.14. **LANDSCAPING.** No person may perform landscaping, planting, or gardening on the common area without the board's prior written authorization.

5.15. **LEASING OF HOMES.** An owner may lease the dwelling on his lot. Whether or not it is so stated in a lease, every lease is subject to the Documents. An owner is responsible for providing his tenant with copies of the Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Documents against the owner's tenant.

4914 1090

5.16. **NOISE & ODOR.** A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring lots. The Rules may prohibit the use of noise-producing security devices and windchimes.

5.17. **OCCUPANCY.** Other than the completed principle dwelling, no thing or structure on a lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

Yes, there are lots of rules!
**EVERY RESIDENT OF ABBEY HILL PARK
IS EXPECTED TO COMPLY WITH THESE RULES
AND WITH RULES ADOPTED BY THE BOARD OF DIRECTORS.**

5.18. **RESIDENTIAL USE.** The use of a lot is limited exclusively to residential purposes or any other use permitted by this Declaration. This residential restriction does not, however, prohibit a resident from using a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) there is no external evidence of the uses; (4) the uses do not entail visits to the lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (5) the uses do not interfere with residents' use and enjoyment of neighboring lots.

5.19. **SCREENING.** The ACC may require that the following items must be screened from the view of the public and neighboring lots and dwellings, if any of these items exists on the lot: (1) air conditioning equipment; (2) satellite reception equipment; (3) clotheslines, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (4) yard maintenance equipment; (5) wood piles and compost piles; (6) accessory structures that do not have prior approval of ACC; (7) garbage cans and refuse containers; (8) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Plant material, such as trees and bushes, may be used for screening.

5.20. **SIGNS.** An owner may erect, per lot, one professionally made sign of not more than 5 square feet advertising the lot for sale or for rent. No other signs advertising the lots for sale or lease, other advertising signs, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the board's prior written approval. The board's approval may specify the location, nature, appearance, dimensions, number, and time period of any advertising sign. The Association may effect the removal of any sign that violates this Section or which the board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal.

5.21. **TELEVISION.** Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another lot are prohibited within the Property, except (1) reception-only antennas or satellite dishes designed to receive

4914 1091

television broadcast signals, (2) antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or (3) antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services (MDS) (collectively, the "Antennas") are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the lot where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

5.22. TEMPORARY STRUCTURES. Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a lot if visible from a street or another lot. However, an owner or owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the lot during construction of the dwelling.

5.23. VEHICLES. All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section and Rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property. Without prior written board approval, the following types of vehicles and vehicular equipment -- mobile or otherwise -- may not be kept, parked, or stored anywhere on the Property if the vehicle is visible from a street or from another lot: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles with advertising signage, vehicles which are not customary personal passenger vehicles, and any vehicle which the board deems to be a nuisance, unsightly, or inappropriate. This restriction includes overnight parking on streets, driveways, and alleys. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the owner or operator of the vehicle.

5.24. WINDOW TREATMENTS. All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The ACC may require an owner to change or remove a window treatment that the ACC determines to be inappropriate or unattractive. The ACC may prohibit the use of certain colors or materials for window treatments.

ARTICLE 6

ASSOCIATION AND MEMBERSHIP RIGHTS

6.1. BOARD. Unless the Documents expressly reserve a right, action, or decision to the owners, Declarant, or another party, the board acts in all instances on behalf of the Association.

4914 1092

Unless the context indicates otherwise, references in the Documents to the "Association" may be construed to mean "the Association acting through its board of directors."

6.2. THE ASSOCIATION. The duties and powers of the Association are those set forth in the Documents, together with the general and implied powers of a property owners association and a nonprofit corporation organized under the laws of the State of Texas. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Documents. The Association comes into existence on the earlier of (1) issuance of its corporate charter or (2) the initial levy of assessments against the lots and owners. The Association will continue to exist at least as long as the Declaration is effective against the Property, regardless of whether its corporate charter lapses from time to time.

EVERY OWNER OF A ABBEY HILL PARK LOT AUTOMATICALLY JOINS A MANDATORY MEMBERSHIP ASSOCIATION.

6.3. GOVERNANCE. The Association will be governed by a board of directors elected by the members. Unless the Association's bylaws or articles of incorporation provide otherwise, the board will consist of at least 3 persons elected at the annual meeting of the Association, or at a special meeting called for that purpose. The Association will be administered in accordance with the bylaws. Unless the Documents provide otherwise, any action requiring approval of the members may be approved in writing by owners of at least a majority of all lots, or at a meeting by owners of at least a majority of the lots that are represented at the meeting.

6.4. MEMBERSHIP. Each owner is a member of the Association, ownership of a lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association. If a lot is owned by more than one person or entity, each co-owner is a member of the Association and may exercise the membership rights appurtenant to the lot. A member who sells his lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

6.5. VOTING. One vote is appurtenant to each lot. The total number of votes equals the total number of lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other lot, except during the Development Period as permitted in Appendix C. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's bylaws.

6.6. VOTING BY CO-OWNERS. The one vote appurtenant to a lot is not divisible. If only one of the multiple co-owners of a lot is present at a meeting of the Association, that person may cast the vote allocated to the lot. If more than one of the co-owners is present, the lot's one vote may be cast with the co-owners' unanimous agreement. Co-owners are in unanimous agreement if one of the co-owners casts the vote and no other co-owner makes prompt protest to

4914 1093

the person presiding over the meeting. Any co-owner of a lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other co-owners. If the person presiding over the meeting or balloting receives evidence that the co-owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

6.7. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Nonprofit Corporation Act.

6.8. INDEMNIFICATION. The Association indemnifies every officer, director, and committee member (for purposes of this Section, "Leaders") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. The Association may maintain general liability and directors and officers liability insurance to fund this obligation.

6.9. OBLIGATIONS OF OWNERS. Without limiting the obligations of owners under the Documents, each owner has the following obligations:

6.9.1. Information. Within 30 days after acquiring an interest in a lot, within 30 days after the owner has notice of a change in any information required by this Subsection, and on request by the Association from time to time, an owner will provide the Association with the following information: (1) a copy of the recorded deed by which owner has title to the lot; (2) the owner's address, phone number, and driver's license number, if any; (3) any mortgagee's name, address, and loan number; (4) the name and phone number of any resident other than the owner; (5) the name, address, and phone number of owner's managing agent, if any.

6.9.2. Pay Assessments. Each owner will pay assessments properly levied by the Association against the owner or his lot, and will pay regular assessments without demand by the Association.

6.9.3. Comply. Each owner will comply with the Documents as amended from time to time.

6.9.4. Reimburse. Each owner will pay for damage to the Property caused by the negligence or willful misconduct of the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, contractors, agents, or invitees.

6.9.5. Liability. Each owner is liable to the Association for violations of the Documents by the owner, a resident of the owner's lot, or the owner or resident's family, guests, employees, agents, or invitees, and for costs incurred by the Association to obtain compliance, including attorney's fees whether or not suit is filed.

4914 1094

6.10. TRANSFER-RELATED FEES. A number of independent fees may be charged in relation to the transfer of title to a lot, including but not limited to fees for resale certificates, estoppel certificates, copies of the Documents, compliance inspections, ownership record changes, and priority processing, provided the fees are customary in amount, kind, and number for the local marketplace. Transfer-related fees are not refundable and may not be regarded as a prepayment of or credit against regular or special assessments. Transfer-related fees do not apply to the following transfers unless a party to the transfer requests the corresponding documentation: (1) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (2) transfer to, from, or by the Association; (3) voluntary transfer by an owner to one or more co-owners, or to the owner's spouse, child, or parent. Transfer-related fees may be charged by the Association or by the Association's managing agent, provided there is no duplication of fees. Transfer-related fees charged by or paid to a managing agent must have the prior written approval of the Association, are not subject to the Association's assessment lien, and are not payable by the Association. This Section does not obligate the board or the managing agent to levy transfer-related fees.

**ARTICLE 7
COVENANT FOR ASSESSMENTS**

7.1. PURPOSE OF ASSESSMENTS. The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the board's decision with respect to the use of assessments is final.

7.2. PERSONAL OBLIGATION. An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's obligation is not subject to offset by the owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

**IF YOU OWN A ABBEY HILL PARK LOT, YOU MUST
PAY ASSESSMENTS TO THE ASSOCIATION.**

7.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of owners of at least two-thirds of the lots. In addition to other rights granted to owners by this Declaration, owners have the following powers and controls over the Association's budget:

7.3.1. Veto Increased Dues. At least 30 days prior to the effective date of an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will

4914 1095

automatically become effective unless owners of at least a majority of the lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

7.3.2. Veto Special Assessment. At least 30 days prior to the effective date of a special assessment, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment. The special assessment will automatically become effective unless owners of at least majority of the lots disapprove the special assessment by petition or at a meeting of the Association.

7.4. TYPES OF ASSESSMENTS. There are 3 types of assessments: Regular, Special, and Individual.

7.4.1. Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined. If during the course of a year the board determines that regular assessments are insufficient to cover the estimated common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the common area.
- b. Utilities billed to the Association.
- c. Services billed to the Association and serving all lots.
- d. Taxes on property owned by the Association and the Association's income taxes.
- e. Management, legal, accounting, auditing, and professional fees for services to the Association.
- f. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- g. Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- h. Contributions to the reserve funds.
- i. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the board is necessary or

4914 1096

proper for the operation and maintenance of the Property or for enforcement of the Documents.

7.4.2. Special Assessments. In addition to regular assessments, and subject to the owners' control for assessment increases, the board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the owners, except that special assessments for the following purposes must be approved by owners of least a majority of the lots:

- a. Acquisition of real property, other than the purchase of a lot at the sale foreclosing the Association's lien against the lot.
- b. Construction of additional improvements within the Property, but not replacement of original improvements.
- c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

7.4.3. Individual Assessments. In addition to regular and special assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-lot basis; and "pass through" expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

7.5. BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling, but subject to lower rates of assessment for vacant lots. The rates of assessment are as follows:

7.5.1. Improved Lot. A lot that has been improved with a dwelling for which the city has issued the initial certificate of occupancy will at all times thereafter be assessed at the full rate.

7.5.2. Vacant Lot. A lot that is vacant or on which a dwelling is under construction is assessed at half of the full rate. A vacant lot becomes subject to assessment at the full rate on the first day of the month following the month in which the city issues a certificate of occupancy. The board may revoke the reduced-rate status of a vacant lot if becomes necessary or desirable for the Association to spend money on or for the lot, or if the board determines that a completed dwelling is eligible for a certificate of occupancy.

4914 1097

7.5.3. Declarant Lots. Notwithstanding the two preceding subsections, a lot that is owned by Declarant during the Development Period is eligible for the assessment exemption in Appendix C.

7.6. ANNUAL BUDGET. The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will provide copies of the detailed budget to owners who make written request and pay a reasonable copy charge.

7.7. DUE DATE. The board may levy regular assessments on any periodic basis -- annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

7.8. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association may budget for reserves and may fund reserves out of regular assessments.

7.8.1. Operations Reserves. The Association will endeavor to maintain operations reserves at a level sufficient to cover the cost of operational or maintenance emergencies or contingencies, including the full amount of deductibles on insurance policies maintained by the Association.

7.8.2. Replacement & Repair Reserves. The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the common area.

7.9. ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder.

7.10. ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

4914 1098

7.10.1. Superiority of Assessment Lien. The assessment lien is superior to all other liens and encumbrances on a lot, except only for (1) real property taxes and assessments levied by governmental and taxing authorities, (2) a deed of trust or vendor's lien recorded before this Declaration, (3) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (4) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent assessment became due.

7.10.2. Superiority of Mortgage Lien. The assessment lien is subordinate and inferior to a recorded deed of trust lien that secures (1) a first or senior purchase money mortgage, (2) an FHA-insured mortgage, or (3) a VA-guaranteed mortgage.

7.10.3. Effect of Foreclosure. Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner. The purchaser at the foreclosure sale is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

Yes, the HOA can foreclose!
If you fail to pay assessments to the Association, you may lose title to your home if the Association forecloses its assessment lien against your lot.

7.10.4. Perfection of Lien. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the county's real property records. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing owner.

7.10.5. Power of Sale. By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

7.10.6. Foreclosure of Lien. The assessment lien may be enforced by judicial or nonjudicial foreclosure. A nonjudicial foreclosure must be conducted in accordance with the provisions applicable to the exercise of powers of sale as set forth in Section 51.002 of the Texas Property Code, or in any manner permitted by law. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

4914 1099

7.11. **LIMITATIONS OF INTEREST.** The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

ARTICLE 8
EFFECT OF NONPAYMENT OF ASSESSMENTS
AND VIOLATION OF THE DOCUMENTS

8.1. **COLLECTING DELINQUENT ASSESSMENTS.** Owners who honor their obligations to the Association should not be burdened by owners who default. The Association, acting through its board, is responsible for taking action to collect delinquent assessments. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

8.1.1. **Delinquency.** An assessment is delinquent if the Association does not receive payment in full by the assessment's due date.

8.1.2. **Notice to Mortgagee.** The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

8.1.3. **Interest.** Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the board fails to establish a rate, the rate is 10 percent per annum.

8.1.4. **Late Fees.** Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time.

8.1.5. **Costs of Collection.** The owner of a lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

8.1.6. **Acceleration.** If an owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

8.1.7. **Suspension of Use and Vote.** If an owner's account has been delinquent for at least 30 days, the Association may suspend the right of owners and residents to use

4914 1100

common areas and common services during the period of delinquency. The Association may also suspend the right to vote appurtenant to the lot. Suspension does not constitute a waiver or discharge of the owner's obligation to pay assessments.

8.1.8. Money Judgment. The Association may file suit seeking a money judgment against an owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

8.1.9. Foreclosure of Assessment Lien. As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

8.1.10. Application of Payments. The board may adopt and amend policies regarding the application of payments. After the Association notifies the owner of a delinquency, any payment received by the Association may be applied in the following order: individual assessments, special assessments, and (lastly) regular monthly assessments. The Association may refuse to accept partial payment, i.e., less than the full amount due and payable. The Association may also refuse to accept payments to which the payer attaches conditions or directions contrary to the board's policy for applying payments. The Association's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the lot's account.

8.2. ENFORCING THE DOCUMENTS. The remedies provided in this Section for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Documents and by law, the Association has the following right to enforce the Documents:

8.2.1. Nuisance. The result of every act or omission that violates any provision of the Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

8.2.2. Fine. The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Documents.

8.2.3. Suspension. The Association may suspend the right of owners and residents to use common areas for any period during which the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the owner's obligations under the Documents.

8.2.4. Self-Help. The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the board is not trespassing and is not liable for damages related to the abatement. The

4914 1101

board may levy its costs of abatement against the lot and owner as an individual assessment. Unless an emergency situation exists in the good faith opinion of the board, the board will give the violating owner 15 days' notice of its intent to exercise self-help.

8.2.5. Suit. Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

8.2.6. No Waiver. The Association and every owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Documents at any future time.

8.2.7. No Liability. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Documents at any time.

8.2.8. Recovery of Costs. The costs of curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Documents or the restraint of violations of the Documents, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

8.3. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of assessments), or before levying an individual assessment for property damage, the Association will give the owner written notice of the levy and an opportunity to be heard before the board. The Association may also give a copy of the notice to the resident. Pending the hearing, the Association may continue to exercise its other rights and remedies for the violation, as if the declared violation were valid. The owner's request for a hearing suspends only the levy of a fine or damage charge. The owner may attend the hearing in person, or may be represented by another person or written communication. The board may adopt additional procedures and requirements for notices and hearing.

ARTICLE 9 MAINTENANCE AND REPAIR OBLIGATIONS

9.1. ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged when and how the board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots or common areas.

- a. The common areas.

4914 1102

- b. Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association.
- c. Any area, item, easement, or service -- the maintenance of which is assigned to the Association by this Declaration or by the plat.

9.2. OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property:

9.2.1. House Maintenance. Each owner, at the owner's expense, must maintain all improvements on the lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to maintain his lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

9.2.2. Yard Maintenance. Each owner, at the owner's expense, must maintain the yards on his lot at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must:

- a. Maintain an attractive ground cover or lawn on all yards visible from a street.
- b. Edge the street curbs at regular intervals.
- c. Mow the lawns and grounds at regular intervals.
- d. Prevent lawn weeds or grass from exceeding 6 inches in height.
- e. Not plant vegetable gardens that are visible from a street.
- f. Prevent plant material in front of windows from growing taller than the window bottom.

9.2.3. Avoid Damage. An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

9.2.4. Responsible for Damage. An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas or the property of another owner.

9.3. OWNER'S DEFAULT IN MAINTENANCE. If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot.

4914 1103

In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

ARTICLE 10 INSURANCE

10.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the board will make every reasonable effort to comply. The cost of insurance coverages and bonds maintained by the Association is an expense of the Association. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas. The Association must be the named insured on all policies obtained by the Association. Each owner irrevocably appoints the Association, acting through its board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association. Additionally:

10.1.1. Notice of Cancellation or Modification. Each insurance policy maintained by the Association should contain a provision requiring the insurer to give at least 10 days' prior written notice to the board before the policy may be canceled, terminated, materially modified, or allowed to expire, by either the insurer or the insured.

10.1.2. Deductibles. An insurance policy obtained by the Association may contain a reasonable deductible, which will be paid by the party who would be liable for the loss or repair in the absence of insurance. If a loss is due wholly or partly to an act or omission of an owner or resident or their invitees, the owner must reimburse the Association for the amount of the deductible that is attributable to the act or omission.

10.2. PROPERTY. To the extent it is reasonably available, the Association will obtain blanket all-risk insurance for insurable common area improvements. If blanket all-risk insurance is not reasonably available, then the Association will obtain an insurance policy providing fire and extended coverage. Also, the Association will insure the improvements on any lot owned by the Association.

ARE YOU COVERED?

The Association does NOT insure the individual houses or their contents.

10.3. GENERAL LIABILITY. The Association will maintain a commercial general liability insurance policy over the common areas -- expressly excluding the liability of each owner and resident within his lot -- for bodily injury and property damage resulting from the operation, maintenance, or use of the common areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an owner's claim because of negligent acts of the Association or other owners.

10.4. DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will maintain directors and officers liability insurance, errors and omissions insurance,

4914 1104

indemnity bonds, or other insurance the board deems advisable to insure the Association's directors, officers, committee members, and managers against liability for an act or omission in carrying out their duties in those capacities.

10.5. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including but not limited to worker's compensation insurance, fidelity coverage, and any insurance and bond requested and required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a Mortgagee or an owner.

10.6. OWNER'S RESPONSIBILITY FOR INSURANCE. Each owner will obtain and maintain fire and extended coverage on all the improvements on his lot, in an amount sufficient to cover 100 percent of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard. Further, each owner will obtain and maintain general liability insurance on his lot. Each owner will provide the Association with proof or a certificate of insurance on request by the Association from time to time. If an owner fails to maintain required insurance, or to provide the Association with proof of same, the board may obtain insurance on behalf of the owner who will be obligated for the cost as an individual assessment. The board may establish additional minimum insurance requirements, including types and minimum amounts of coverage, to be individually obtained and maintained by owners if the insurance is deemed necessary or desirable by the board to reduce potential risks to the Association or other owners. Each owner and resident is solely responsible for insuring his personal property in his dwelling and on the lot, including furnishings, vehicles, and stored items.

ARTICLE 11 MORTGAGEE PROTECTION

11.1. INTRODUCTION. This Article establishes certain standards for the benefit of Mortgagees, and is written to comply with Chapter VI of Fannie Mae's Selling Guide in effect at the time of drafting. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the board, without approval of owners or mortgagees, may amend this Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls. Some sections of this Article apply to "Mortgagees," as defined in Article 1. Other sections apply to "Eligible Mortgagees," as defined below.

11.2. KNOWN MORTGAGEES. An owner who mortgages his lot will notify the Association, giving the complete name and address of his mortgagee and the loan number. An owner will also provide that information on request by the Association from time to time. The Association's obligations to mortgagees under the Documents extend only to those mortgagees known to the Association. All actions and approvals required by mortgagees will be conclusively satisfied by the mortgagees known to the Association, without regard to other holders of liens on lots. The Association may rely on the information provided by owners and mortgagees.

11.3. ELIGIBLE MORTGAGEES. "Eligible Mortgagee" means a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying

4914 1105

number and street address of the mortgaged lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per lot will be valid so long as the Eligible Mortgagee holds a mortgage on the lot. The board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting which an owner may attend.

11.4. MORTGAGEE RIGHTS.

11.4.1. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least 51 percent of Eligible Mortgagees, in addition to the required consents of owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two-thirds of Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within 30 days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

11.4.2. Inspection of Books. Mortgagees may inspect the Association's books and records, including the Documents, by appointment, during normal business hours.

11.4.3. Financial Statements. If a Mortgagee so requests, the Association will give the Mortgagee an audited statement for the preceding fiscal year within 120 days after the Association's fiscal year-end. A Mortgagee may have an audited statement prepared at its own expense.

11.4.4. Right of First Refusal. Any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a lot does not apply to a lease, sale, or transfer by a Mortgagee, including transfer by deed in lieu of foreclosure or foreclosure of a deed of trust lien.

11.5. INSURANCE POLICIES. If an Underwriting Lender is a Mortgagee or an owner, at the request of the Underwriting Lender the Association will comply with the Underwriting Lender's insurance requirements to the extent the requirements are reasonable and available, and do not conflict with other insurance requirements of this Declaration.

ARTICLE 12 **AMENDMENTS**

12.1. CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the board alone. Otherwise, amendments to this Declaration must be approved by owners of at least a majority of the lots.

12.2. METHOD OF AMENDMENT. For an amendment that requires the approval of owners, this Declaration may be amended by any method selected by the board from time to time, pursuant to the bylaws, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

4914 1186

12.3. **EFFECTIVE.** To be effective, an amendment must be in the form of a written instrument (1) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (2) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners and, if required, Eligible Mortgagees; and (3) recorded in the real property records of every county in which the Property is located.

12.4. **DECLARANT PROVISIONS.** No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. This Section may not be amended without Declarant's written and acknowledged consent.

12.5. **MERGER.** Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association may administer the provisions of the Documents within the Property together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

12.6. **TERMINATION.** Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least 80 percent of the lots.

12.7. **CONDEMNATION.** In any proceeding, negotiation, settlement, or agreement concerning condemnation of the common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area, real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

ARTICLE 13 DISPUTE RESOLUTION

13.1. **INTRODUCTION & DEFINITIONS.** The Association, the owners, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "Parties") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

4914 1107

13.1.1. "Claim" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- a. Claims arising out of or relating to the interpretation, application, or enforcement of the Documents.
- b. Claims relating to the rights and/or duties of Declarant as Declarant under the Documents.
- c. Claims relating to the design, construction, or maintenance of the Property.

13.1.2. "Claimant" means any Party having a Claim against any other Party.

13.1.3. "Declarant" means, individually and collectively, the Declarant as defined in Article 1; Declarant's architect, engineer, other design professionals, general contractor, and broker; and their respective officers, directors, principals, employees, and agents.

13.1.4. "Exempt Claims" means the following claims or actions, which are exempt from this Article:

- a. The Association's claim for assessments, and any action by the Association to collect assessments.
- b. An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- c. Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- d. A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

13.1.5. "Respondent" means the Party against whom the Claimant has a Claim.

13.2. **MANDATORY PROCEDURES.** Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.

13.3. **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "Notice"), stating plainly and concisely: (1) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (2) the basis of the Claim (i.e., the provision of the Documents or other authority out of which the Claim arises); (3) what Claimant wants Respondent to do or not do to resolve the Claim; and (4) that the Notice is given pursuant to this Section.

4914 1108

13.4. **NEGOTIATION.** Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

13.5. **MEDIATION.** If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

13.6. **TERMINATION OF MEDIATION.** If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

13.7. **ALLOCATION OF COSTS.** Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

13.8. **ENFORCEMENT OF RESOLUTION.** Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

13.9. **GENERAL PROVISIONS.** A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

4914 1109

ARTICLE 14
GENERAL PROVISIONS

14.1. **COMPLIANCE**. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

14.2. **HIGHER AUTHORITY**. The Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance.

14.3. **NOTICE**. All demands or other notices required to be sent to an owner or resident by the terms of this Declaration may be sent by ordinary or certified mail, postage prepaid, to the party's last known address as it appears on the records of the Association at the time of mailing. If an owner fails to give the Association an address for mailing notices, all notices may be sent to the owner's lot, and the owner is deemed to have been given notice whether or not he actually receives it.

14.4. **LIBERAL CONSTRUCTION**. The terms and provision of each Document are to be liberally construed to give effect to the purposes and intent of the Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved in favor of the operation of the Association and its enforcement of the Documents, regardless which party seeks enforcement.

14.5. **SEVERABILITY**. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

14.6. **CAPIONS**. In all Documents, the captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Boxed notices are inserted to alert the reader to certain provisions and are not to be construed as defining or modifying the text.

14.7. **APPENDIXES**. The appendixes listed below are attached to this Declaration and incorporated herein by reference. Because Appendix C of this Declaration is destined to become obsolete, beginning 15 years after the date this Declaration is first recorded, this Declaration may be restated, rerecorded, or published without Appendix C, provided the other appendixes are not relettered. The automatic expiration and subsequent deletion of Appendix C does not constitute an amendment of this Declaration. The Appendixes to this Declaration include:

- A - Description of Subject Land
- B - Construction Specifications
- C - Declarant's Representations and Reservations

4914 1110

14.8. INTERPRETATION. Whenever used in the Documents, unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

14.9. DURATION. Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

14.10. PREPARER. This Declaration was prepared by Sharon Reuler, P.C., of Palmer, Allen & McTaggart, L.L.P., 8111 Preston Road, Suite 300, Dallas, Texas 75225.

SIGNED AND ACKNOWLEDGED

SIGNED on this 7th day of May 2001.

D. R. HORTON - TEXAS, LTD., a Texas limited partnership

By: **D. R. HORTON, INC.,** a Delaware corporation, its authorized agent

By: David L. Booth
David L. Booth, Assistant Secretary

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 7th day of May 2001 by David L. Booth, Assistant Secretary of D. R. Horton, Inc., a Delaware corporation, on behalf of said corporation in its capacity as authorized agent for D. R. Horton - Texas, Ltd., a Texas limited partnership, on behalf of the limited partnership.



Cynthia Evans
Notary Public, The State of Texas

4914 1111

APPENDIX A
DESCRIPTION OF SUBJECT LAND

ABBAY HILL PARK

The 31.422-acre tract described by metes and bounds in the Legal Description of the Final Plat of Abbey Hill Park, recorded on November 9, 2000, as Document No. 2000-0123392, in Cabinet M, Page 334, Plat Records, Collin County, Texas, including the following common areas and 103 house lots:

HOUSE LOTS:

BLOCK A: LOTS 1 - 18 & 20 - 38
BLOCK B: LOTS 1 - 66

COMMON AREAS

DOT 19 OF BLOCK A
Open Space along F.M. 2551

4914 1112

APPENDIX B
CONSTRUCTION SPECIFICATIONS

All improvements on a lot must (1) comply with any applicable city ordinances and codes, (2) have a building permit issued by the city, if the type of improvement requires a permit, and (3) have the ACC's prior written approval. These 3 requirements are independent -- one does not ensure or eliminate the need for another. The lot owner and/or owner's contractor must comply with all 3 requirements. Without the ACC's prior written approval for a variance, improvements constructed on every lot must have the following characteristics:

B.1. LOTS. The size of each lot must comply with the requirements of applicable ordinances.

B.2. HOUSES. The principle improvement on a lot must be one detached single family dwelling. The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by the ACC.

B.3. NEW CONSTRUCTION. Dwellings must be constructed on the lot. A dwelling or addition constructed elsewhere may not be moved onto a lot. The construction of a dwelling must be started promptly after the ACC approves the dwelling's plans and specification. At the start of construction -- but not before -- building material to be used in the construction may be stored on the lot. Once started, the dwelling and all improvements on the lot must be completed with due diligence.

B.4. EXTERIOR WALL MATERIALS. Exterior wall materials must be approved by the ACC. Generally, at least 75 percent of the dwelling's total exterior area, minus windows and doors, must be masonry or masonry veneer, such as brick, stone, or stucco.

B.5. ROOFS. Roofs must be covered with material having a manufacturer's warranty of at least 20 years, such as GAF Centennial or its equivalent. The use of fiberglass shingles is permitted. The color of roofing material must be weatherwood or an equivalent earth tone color. The ACC may permit or require other weights, materials, and colors.

B.6. GARAGE & DRIVEWAY. Each dwelling must have an attached garage for at least two standard-size cars. If the lot has alley access, the garage must be a rear or side entry using the alley for access. The driveway must be surfaced with concrete.

B.7. LANDSCAPING. Landscaping must be installed on the front and side yards of the lot within 90 days after an occupancy permit is issued for the dwelling.

B.8. ACCESSORIES. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, is subject to the ACC's prior approval, including approval of design, color, materials, and location.

B.9. MAILBOXES. If curbside boxes are permitted by postal authorities, the ACC may require a uniform size and style of mailbox and pedestal.

4914 1113

B.10. FENCES & WALLS. This Section is subject to the ACC's right to adopt additional or different specifications for construction or reconstruction of fences. The height of fences must be between 4 feet and 8 feet. Fences must be made of masonry, wood, or other ACC-approved material. Retaining walls must be constructed entirely with ACC-approved materials, however railroad ties may not be used for a retaining wall visible from a street. Fences may not be constructed between a dwelling's front building line and the street. The use of chain link fencing is prohibited.

B.11. UTILITIES. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The ACC may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Each lot will use city water and sewage systems. Individual water supply and sewage disposal systems are not permitted.

B.12. AIR CONDITIONERS. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited. The ACC may require that air-conditioning equipment and apparatus be visually screened from the street and neighboring lots.

B.13. NO SUBDIVISION. No lot may be subdivided. One or more lots may be replatted with the approval of all owners of the lots directly affected by the replatting, and subject to the approval of the city. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of lots may not alter the number of votes and assessments allocated to the lots as originally platted. If replatting reduces the number of lots by combining lots, the joined lot will have the votes and assessments allocated to the lots as originally platted.

B.14. DEBRIS. No lot or other part of the Property may be used a dumping ground. Waste materials incident to construction or repair of improvements on a lot may be stored temporarily on the lot during construction while work progresses and must be removed when construction or repair is complete.

[End of Appendix B]

4914 1114

APPENDIX C
DECLARANT REPRESENTATIONS & RESERVATIONS

C.1. GENERAL PROVISIONS.

C.1.1. Introduction. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when Declarant's role is complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant-related provisions in this Appendix.

C.1.2. General Reservation & Construction. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Appendix which Declarant hereby reserves exclusively unto itself and its successors and assigns. In case of conflict between this Appendix and any other Document, this Appendix controls. This Appendix may not be amended without the prior written consent of Declarant. The terms and provisions of this Appendix must be construed liberally to give effect to Declarant's intent to protect Declarant's interests in the Property.

C.1.3. Purpose of Development and Declarant Control Periods. This Appendix gives Declarant certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of the Property, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.

C.1.4. Definitions. As used in this Appendix and elsewhere in the Documents, the following words and phrases, when capitalized, have the following specified meanings:

- a. **"Builder"** means a person or entity which purchases, or contracts to purchase, a lot from Declarant or from a Builder for the purpose of constructing a dwelling for resale or under contract to an owner other than Declarant.
- b. **"Declarant Control Period"** means that period of time during which Declarant controls the operation of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earliest of:
 - (1) Four years from date this Declaration is recorded.
 - (2) Four months after title to 75 percent of the lots that may be created in the Property has been conveyed to owners other than Builders.

4914 1115

- (3) Two years after Declarant or any Builder ceases developing, constructing, or marketing the Property and the lots.
- (4) When, in Declarant's sole opinion, the Association is viable, self-supporting, and operational.

C.1.5. Builders. Declarant, in its own name or through its affiliates, intends to construct dwellings on the lots in connection with the sale of the lots. However, Declarant may, without notice, sell some or all of the lots to one or more Builders to improve the lots with dwellings to be sold and occupied.

C.2. DECLARANT CONTROL PERIOD RESERVATIONS. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

C.2.1. Officers & Directors. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners.

C.2.2. Budget Funding. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's operating expenses and the regular assessments received from owners other than Declarant, and will provide any additional funds necessary to pay actual cash outlays of the Association. On termination of the Declarant Control Period, Declarant will cease being responsible for the difference between the Association's operating expenses and the assessments received from owners other than Declarant.

C.2.3. Declarant Assessments. During the Declarant Control Period, lots owned by Declarant are not subject to assessment.

C.2.4. Builder Assessments. During the Declarant Control Period only, Declarant has the right but not the duty to reduce or waive the assessment obligation of a Builder, provided the agreement is in writing.

C.2.5. Commencement of Assessments. During the initial development of the Property, Declarant may elect to postpone the Association's initial levy of regular assessments until a certain number of lots are sold. During the Declarant Control Period, Declarant will determine when the Association first levies regular assessments against the lots. Prior to the first levy, Declarant will be responsible for all operating expenses of the Association.

C.2.6. Expenses of Declarant. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not expenses of the Association.

C.2.7. Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

C.2.8. Organizational Meeting. Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational

4914 1116

meeting of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the organizational meeting must be given to an owner of each lot at least 10 days before the meeting. For the organizational meeting, owners of 10 percent of the lots constitute a quorum.

C.2.9. Common Areas. At or prior to termination of the Declarant Control Period, Declarant will convey title to the common areas to the Association by deed -- with or without warranty. At the time of conveyance, the common areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners.

C.3. DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

C.3.1. Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by the city, Declarant may (1) change the sizes, dimensions, and configurations of lots and streets; (2) change the minimum dwelling size; (3) change the building setback requirements; and (4) eliminate or modify any other feature of the Property.

C.3.2. Builder Limitations. Declarant may require its approval (which may not be unreasonably withheld) of all documents and materials used by a Builder in connection with the development and sale of lots, including without limitation promotional materials; deed restrictions; forms for deeds, lot sales, and lot closings. Without Declarant's prior written approval, a Builder may not use a sales office or model in the Property to market houses, lots, or other products located outside the Property.

C.3.3. Weighted Votes. During the Development Period, the vote appurtenant to each lot owned by Declarant is weighted 10 times that of the vote appurtenant to a lot owned by another owner. In other words, during the Development Period, Declarant may cast the equivalent of 10 votes for each lot owned by Declarant on any issue before the Association. On termination of the Development Period and thereafter, the vote appurtenant to Declarant's lots is weighted uniformly with all other votes.

C.3.4. ACC. During the Development Period, Declarant has the absolute right to appoint the Architectural Control Committee, consisting of any number of persons who serve at the pleasure of Declarant, and who may be removed and replaced by Declarant. Notwithstanding the foregoing, during the Development Period -- after termination of Declarant Control, or earlier if Declarant permits -- the board may appoint or serve as a "modifications committee" to respond exclusively to modifications of completed homes that are owned by persons other than Declarant or Builders. A modifications committee may not involve itself with the approval of new homes on vacant lots.

4914 1117

C.3.5. Amendment. During the Development Period, Declarant may amend this Declaration and the other Documents, without consent of other owners or any mortgagee, for the following limited purposes:

- a. To add real property to the Property.
- b. To withdraw real property from the Property.
- c. To create lots, easements, and common areas within the Property.
- d. To subdivide, combine, or reconfigure lots.
- e. To convert lots into common areas.
- f. To modify the construction specifications of Appendix B of this Declaration.
- g. To merge the Association with another property owners association.
- h. To comply with requirements of an underwriting lender.
- i. To resolve conflicts, clarify ambiguities, and to correct misstatements, errors, or omissions in the Documents.
- j. To enable any reputable title insurance company to issue title insurance coverage on the lots.
- k. To enable an institutional or governmental lender to make or purchase mortgage loans on the lots.
- l. To change the name or entity of Declarant.
- m. To change the name of the addition in which the Property is located.
- n. For any other purpose, provided the amendment has no material adverse effect on any right of any owner.

C.3.6. Amendment with FHA/VA Approval. During the Development Period, the following actions require the prior written approval of the U.S. Department of Housing and Urban Development ("HUD/FHA") or the U. S. Department of Veterans Affairs ("VA") so long as HUD/FHA insures or VA guarantees a mortgage on a lot: (1) annexation of additional property to the Property, except for annexation by Declarant pursuant to a plan of development previously approved by HUD/FHA or VA; (2) merger or consolidation with another property owners association; (3) mortgaging of common area; (4) dedication of common area to a public entity; (5) amendment of this Declaration; or (6) dissolution or amendment of the articles of incorporation. The approval of HUD/FHA or VA, as the case may be, is implied when it fails to respond within 30 days after receiving written request for approval of a proposed action, provided the request was delivered by certified or registered mail, return receipt requested.

C.3.7. Completion. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of the Property.

C.3.8. Easement to Inspect & Right to Correct. During the Development Period, Declarant reserves for itself the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access

4914 1118

throughout the Property to the extent reasonably necessary to exercise this right. Declarant will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of a screening wall located on a lot may be warranted by a change of circumstance, imprecise siting of the original wall, or desire to comply more fully with public codes and ordinances. This Section may not be construed to create a duty for Declarant or the Association.

C.3.9. Promotion. During the Development Period, Declarant reserves for itself an easement and right to place and relocate signs, banners, flags, display lighting, and seasonal landscaping on the Property, and to maintain models and sales offices for purposes of promoting, identifying, and marketing the Property and/or Declarant's houses, lots, developments, or other products located outside the Property. During the Development Period, Declarant also reserves (1) the right to permit Builders to place signs and promotional materials on the Property and (2) the right to exempt Builders from the sign restriction in this Declaration.

C.3.10. Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing the Property, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of lots and homes by Declarant or Builders, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

C.3.11. Utility Easements. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, and security.

C.3.12. Assessments. For the duration of the Development Period after the Declarant Control Period, lots owned by Declarant are not subject to assessment until the earlier of: (1) 120 days after the city issues a certificate of occupancy for a completed dwelling on the lot, or (2) the date title to a lot transfers to an owner other than Declarant. After the Development Period, Declarant is liable for assessments on each lot owned in the same manner as any owner.

C.3.13. Transfer Fees. During the Development Period, Declarant may not be required to pay transfer-related and resale certificate fees.

C.4. WORKING CAPITAL FUND. Declarant may (but is not required to) establish a working capital fund for the Association. Each lot's contribution to this fund will not exceed one-sixth of the lot's annual assessment and will be collected on the closing of the sale of the lot to an

4914 1119

owner other than a Builder. Contributions to the fund are not advance payments of regular assessments and are not refundable. Declarant will transfer the balance of the working capital fund to the Association on or before termination of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs, or to cover the Association's budget deficits during the Declarant Control Period.

C.5. SUCCESSOR DECLARANT. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the real property records of Collin County, Texas. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

[End of Appendix C]

4914 1120

AFTER RECORDING, PLEASE RETURN TO:

Sharon Reuler, P.C.
Palmer, Allen & McTaggart, L.L.P.
8111 Preston Road, Suite 300
Dallas, Texas 75225

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (COUNTY OF COLLIN) (THE STATE OF TEXAS)
I hereby certify that this instrument was FILED in the P/M Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

MAY 09 2001

Helen Starnes



Filed for Record in:
Collin County, McKinney TX
Honorable Helen Starnes
Collin County Clerk

On May 09 2001
At 11:20am

Doc/Num : 2001- 0053523
Recording/Type:RS 99.00
Receipt #: 14566