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AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS,

95

RESERVATIONS AND RESTRICTIONS

FOR

GARDEN VALLEY ADDITION

(FORMERLY GARDEN VALLEY GOLF AND TENNIS RESORT)

SMITH COUNTY, TEXAS

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS FOR GARDEN VALLEY ADDITION SMITH COUNTY, TEXAS

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS FOR GARDEN VALLEY ADDITION SMITH COUNTY, TEXAS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESERVATIONS AND RESTRICTIONS FOR GARDEN VALLEY ADDITION, SMITH COUNTY, TEXAS is made on the date hereinafter set forth jointly by GARDEN VALLEY DEVELOPMENT PARTNERS, LTD., a Texas limited partnership (the "**Declarant**") and approved and joined in by GARDEN VALLEY PARTNERS, LTD., a Texas limited partnership ("**Club Owner**").

RECITALS:

Declarant and Club Owner, collectively, own certain land located in Smith County, Texas, which is more particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Property**"). Declarant and Club Owner desire to maintain the beauty of the Property, assure high quality standards for the enjoyment of the Property and to promote the recreational interest, health, safety and social welfare of each Owner of a portion of the Property.

A. The Property has been subjected to and encumbered by a certain Declaration of Covenants, Conditions, Reservations and Restrictions, Phase 1, Section 1, and Phase 1, Section 2, Garden Valley Golf and Tennis Resort, which was filed of record on March 12, 1973 and recorded in Volume 1442, Page 769, of the Deed Records of Smith County, Texas (the "**First Covenants**").

B. Pursuant to Article XXV of the First Covenants, the First Covenants would have a duration for fifty (50) years and "be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of seventy-five percent (75%) of the lots has been recorded, agreeing to change said restrictions, covenants, and conditions in whole or in part."

C. On August 20, 1979 a document entitled Restrictive Covenants on the Garden Valley Golf and Tennis Resort, Phase 1, Section 1 and Section 2, Smith County, Texas, was recorded in Volume 1754, Page 140, of the Deed Records of Smith County, Texas (the "**Second Covenants**").

D. Paragraph 11 of the Second Covenants provided that:

"These covenants and restrictions shall run with the land and shall be binding upon GARDEN VALLEY SPORTS RESORT, INC., and all persons claiming under it, until January 1, 2000, at which time such restrictions shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the Owners of the lots in said subdivision at that time it is agreed to change said restrictions in whole or in part."

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E. Declarant and Club Owner, collectively, own over seventy-five percent (75%) of the lots in Phase I, Section 1 and Section 2 of Garden Valley Golf and Tennis Resort.

F. Lots 50 and 51 of Phase I, Section 1 of Garden Valley Golf and Tennis Resort were dedicated to the use of the golf course in that certain Dedication of Lots for Golf Course Purposes dated September 30, 1981, recorded in Volume 1906, Page 868 of the Deed Records of Smith County, Texas (the "**Dedication**").

G. Declarant and Club Owner desire to subject the Property to this **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GARDEN VALLEY ADDITION, SMITH COUNTY, TEXAS**, which is intended to amend, modify, supercede and replace in its entirety the First Covenants and the Second Covenants, and terminate the Dedication to provide for the orderly development of the Property, to assure quality standards for the enjoyment of the Property and to promote the quality of life for the Owners and residents of the Property.

H. Declarant deems it desirable to create a not-for-profit association to manage the Property. Such Association (as hereinafter defined) shall own, operate, maintain, and administer all the Common Areas (as hereinafter defined). The Association shall administer and enforce the covenants, conditions, restrictions, and limitations set forth herein. The Association shall enforce the easements created herein and shall collect and disburse the Assessments hereinafter created.

NOW, THEREFORE, Declarant and Club Owner hereby declare that all of the Property described herein shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, executors, administrators, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

1.1 **ADJACENT OWNER**. "**Adjacent Owner**" shall have the meaning ascribed to such term in Section 11.2.

1.2 **ARB**. "**ARB**" shall mean the Architectural Review Board, as established pursuant to Article VII hereof.

1.3 **ARB GUIDELINES**. "**ARB Guidelines**" shall refer to the Garden Valley Addition Association, Inc. Architectural Design Guidelines for Garden Valley Addition attached hereto as **Exhibit D**, as the same may be amended from time to time.

1.4 **ARTICLES**. "**Articles**" shall mean and refer to the Articles of Incorporation of the Association, as amended from time to time.

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1.5 **ASSESSMENTS**. "**Assessments**" means all Assessments provided for in this Declaration or the Bylaws, including, but not limited to, Annual Assessments, Special Assessments, and Reimbursement Charges.

1.6 **ASSOCIATION**. "**Association**" shall mean and refer to **GARDEN VALLEY ADDITION ASSOCIATION, INC.**, and its successors and assigns.

1.7 **BOARD OR BOARD OF DIRECTORS**. "**Board**" shall mean and refer to the Board of Directors of the Association.

1.8 **BYLAWS**. "**Bylaws**" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.9 **CLUB**. "**Club**" means Garden Valley Golf Club located on the Property.

1.10 **CLUB FACILITIES PROPERTY**. "**Club Facilities Property**" means the land, improvements and amenities included within the Property that is subject to this Declaration and which will be owned and operated by the Club Owner and described on Exhibit B.

1.11 **CLUB OWNER'S OFFER NOTICE**. "**Club Owner's Offer Notice**" shall have the meaning ascribed to such term in Section 5.4.

1.12 **COMMERCIAL UNIT(S)**. "**Commercial Unit(s)**" shall mean and refer to non-Residential Unit(s).

1.13 **COMMON AREAS**. "**Common Areas**" shall mean and refer to those tracts of land that are deeded to the Association and designated in the deed as "Common Areas" and such improvements thereon that are specifically conveyed to the Association. The term "Common Areas" shall also include (a) the Common Roads, (b) any personal property acquired by the Association, if the personal property is designated as "Common Area," (c) land not owned by the Association but for which the Association elects to assume responsibility for maintenance, and (d) all improvements and amenities constructed or installed for use in connection with the Lakes (defined in Section 11.1) for which the Association has responsibility for maintenance. All Common Areas are to be designated to and intended for the common use and/or enjoyment of the Owners and their guests, lessees, invitees, and employees subject to any operating rules adopted by the Association and subject to any use rights made or reserved by Declarant or any other party prior to conveyance of such Common Areas to the Association, the granting of the easements or the designation for Association maintenance.

1.14 **COMMON EXPENSES**. "**Common Expenses**" shall mean and refer to those items of expense for which the Association is or may be responsible under this Declaration and those additional items of expense approved and adopted in the manner set forth in this Declaration, the Articles, or the Bylaws.

1.15 **COMMON ROADS**. "**Common Roads**" shall mean and refer to the roads, including road right-of-ways, whether or not paved, all as depicted on the Plat of the Property, which provide ingress and egress to a Lot, and shall mean and refer to any and all gates, gate

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houses, gate systems, or other improvements constructed or placed on, over, under, across, or adjacent to the Common Roads for the purpose of providing limited security to the Property. Title to the Common Roads shall be conveyed to the Association upon completion and, accordingly unless specifically set forth to the contrary, references to the Common Area shall mean and include the Common Roads.

1.16 **COMPLIANCE DEPOSIT**. "**Compliance Deposit**" shall have the meaning ascribed to such term in Section 6.4.5.

1.17 **CONSTRUCTION COMMENCEMENT WINDOW**. "**Construction Commencement Window**" shall have the meaning ascribed to such term in Section 6.7.

1.18 **CONSTRUCTION AND SALE PERIOD**. "**Construction and Sale Period**" shall mean that period of time during which Declarant is developing the Property and selling the Lots, which time period shall extend from the date hereof until such time as the Declarant transfers title to all of the Lots in the Development.

1.19 **COUNTY**. "**County**" shall mean and refer to Smith County, Texas.

1.20 **DECLARATION**. "**Declaration**" shall mean and refer to this AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR GARDEN VALLEY ADDITION, SMITH COUNTY, TEXAS, as amended and supplemented herein to now be called GARDEN VALLEY ADDITION, applicable to the Property.

1.21 **DECLARANT**. "**Declarant**" shall mean and refer to **GARDEN VALLEY DEVELOPMENT PARTNERS, LTD.**, a Texas limited partnership, and its successors and assigns, but only if and to the extent the Declarant specifically assigns rights to the successor or assign and such successor or assign shall specifically assume the obligations of Declarant under the Declaration, Articles, Bylaws and ARB Guidelines. Declarant may assign all or part of its rights on an exclusive or nonexclusive basis in the manner set forth in the assignment until such time as Declarant shall have sole control of any development of the Property.

1.22 **DELEGATE**. "**Delegate**" shall mean and refer to the representative of any Sub-Association located within the Property.

1.23 **DEVELOPMENT**. "**Development**" means the land described on Exhibit C.

1.24 **LOT OR LOTS**. "**Lot**" or "**Lots**" shall mean and refer to "Lot" or any plot of land intended as a site for a Commercial or Residential Unit shown on the Plat. Upon construction of a Commercial or Residential Unit, the term "Lot," as used herein shall include the Commercial or Residential Unit.

1.25 **MEMBER**. "**Member**" shall mean and refer to those persons entitled to Class "A" or "B" membership in the Association as provided in this Declaration and Articles.

1.26 **MORTGAGEE**. "**Mortgagee**" shall mean and refer to any institutional holder of a first mortgage encumbering a portion of the Property as security for the performance of an

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obligation; an insurer or guarantor of such mortgage, including without limitation, the Veterans Administration ("VA") or Federal Housing Administration ("FHA") and/or a purchaser or guarantor of such mortgages in the secondary market, including without limitation, Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), Governmental National Mortgage Association ("GNMA"), and the Declarant, if it is holding a first mortgage on any portion of the Property.

1.27 **MULTIFAMILY UNIT**. "**Multifamily Unit**" shall mean and refer to any structure designed for two (2) or more Residential Units.

1.28 **NEGOTIATION PERIOD**. "**Negotiation Period**" shall have the meaning ascribed to such term in Section 5.4.

1.29 **OFFER**. "**Offer**" shall have the meaning ascribed to such term in Section 5.4.

1.30 **OWNER**. "**Owner**" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of fee simple title to any Lot, but excluding those having such interest in a Lot merely as security for the performance of an obligation.

1.31 **PLAT**. "**Plat**" shall mean any recorded plat or replat of any subdivision of the Property as further amended or replatted from time to time.

1.32 **PROPERTY OR PROPERTIES**. "**Property**" or "**Properties**" shall mean and refer to that certain real property described in **Exhibit A** together with improvements thereon.

1.33 **PROPOSED IMPROVEMENTS**. "**Proposed Improvements**" shall have the meaning ascribed to such term in the ARB Guidelines.

1.34 **REIMBURSEMENT CHARGE** "**Reimbursement Charge**" shall have the meaning ascribed to such term in Section 4.8

1.35 **RESIDENTIAL DECLARATION**. "**Residential Declaration**" shall mean a declaration of covenants, conditions, and restrictions for a gated community or a declaration of condominium for the individual residential subdivisions and developments within the Property.

1.36 **RESIDENTIAL UNIT**. "**Residential Unit**" shall mean any single-family residential dwelling constructed on or within any Lot located on the Property, including any (a) Lot located within a gated condominium or planned unit developement within the Property with a separate Sub-Association and (b) condominium units within the Property subject to a condominium declaration.

1.37 **RESPONSE NOTICE**. "**Response Notice**" shall have the meaning ascribed to such term in Section 5.4.

1.38 **ROFO**. "**ROFO**" shall have the meaning ascribed to such term in Section 5.4.

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1.39 **SUB-ASSOCIATION**. "**Sub-Association**" shall mean any Texas non-profit corporation, its successors and assigns, incorporated to govern a gated community, a planned unit development or a condominium regime located within the Property pursuant to the terms of a Residential Declaration.

1.40 **TRPOPA**. "**TRPOPA**" means the Texas Residential Property Owners Protection Act, Chapter 209 of the Texas Property Code.

1.41 **UNIT**. "**Unit**" means either a Residential Unit or a Commercial Unit.

1.42 **UTILITIES**. "**Utilities**" shall mean water, sewer, irrigation systems, electricity, gas, and other services and suppliers of services and goods commonly considered, from time to time, as Utilities, specifically including cable television, and other communication services; provided, however, that the inclusion within this definition of a utility service shall not imply that such service will be available to Owners.

ARTICLE II
PROPERTY RIGHTS

2.1 **OWNER'S EASEMENTS OF ENJOYMENT**. Every Owner shall have a right and easement of enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

2.1.1 the right of the Association to suspend a Member's voting rights and right to the use of recreational or other facilities owned or operated by the Association for any period during which any Assessment against his Lot or Unit, as applicable, remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; provided, however, if there is a conflict between the rights of the Association in this Section 2.1.1 and the requirements and protections of TRPOPA, the requirements and protections of TRPOPA shall control.

2.1.2 the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless (i) an instrument of agreement to such dedication or transfer signed by two-thirds (2/3) of the Members entitled to vote is properly recorded in the Real Property Records of Smith County, Texas, and (ii) written notice of any proposed action provided for under this provision is sent to every Owner and Mortgagee not less than thirty (30) days nor more than sixty (60) days in advance of said action;

2.1.3 the right of the Association to limit the number of guests of Members;

2.1.4 the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and, subject to the consent of all Mortgagees, to mortgage said Common Areas or portions thereof; provided, however, the rights under such improvement mortgage shall be subordinate and inferior to the rights of the Owners hereunder; and

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2.1.5 the right of the Association to make rules and regulations relating to traffic flow and other uses of private drives on the Property.

2.2 **DELEGATION OF USE**. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities within the Common Areas to the members of his family, his tenants, or contract purchasers who reside in the Development. The Owners hereby covenant that any lease executed on a Commercial or Residential Unit shall be in writing and contain provisions binding any lessee thereunder to the terms of the restrictions, rules, and regulations applicable to the Property, and further providing that non-compliance with such restrictions, rules and regulations shall be a default under such lease.

2.3 **TITLE TO THE COMMON AREAS**. The Declarant and Club Owner hereby covenant for themselves, their successors, and assigns, that they will convey fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens. The Common Areas shall remain undivided and shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Areas.

ARTICLE III
OWNER'S ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

3.1 **QUALIFICATION FOR MEMBERSHIP**. Every Owner and the Declarant shall be a mandatory Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3.2 **CLASSES OF MEMBERSHIP**. The Association shall have two classes of voting membership:

3.2.1 Class A. The Class A Members shall be the Owners (other than the Declarant, as long as Class B membership shall exist). Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they, among themselves determine, but in no event shall more than one (1) vote be cast and counted with respect to any Lot. Lots that are (a) designated with the same number, but with different letter designations (for example, Lots 1-A and 1-B) in a particular subdivision or phase thereof and (b) are restricted on the plat creating them so they may not be conveyed separately, shall have in the aggregate only one vote for the purposes of this Section 3.2.1.

3.2.2 Class B. The Class B Member shall be the Declarant which shall be entitled to the number of votes equal to (i) the number of Lots from time to time subject to the Declaration, plus (ii) one (1) vote. The Class B membership shall cease within ninety (90) days after the first to occur of the following events, at which time Declarant shall become a Class A Member entitled to one (1) vote for each Lot owned by Declarant:

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3.2.2.1 when Declarant, in its sole discretion, elects to transfer control to the Class A Members; or

3.2.2.2 when the Property has been fully developed.

3.3 **APPROVED BY VOTING**. Whenever in this Declaration a proposed action or issue must be approved by a specified percentage of the vote of the Association such approval may be obtained by:

3.3.1 the specified percentage of Members casting their respective votes to approve such action or issue in person or by proxy at a duly noticed and constituted meeting of the Members at which a quorum is present, or

3.3.2 the specified percentage of Members holding all necessary votes for such approval by written consent to approve the action or issue, if so authorized by the Board.

ARTICLE IV
COVENANT FOR ASSESSMENTS

4.1 **ANNUAL ASSESSMENTS**. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association "**Annual Assessments**" (herein so called) or charges, such Assessments to be fixed, established and collected as hereinafter provided.

4.2 **PURPOSE OF ANNUAL ASSESSMENTS**. The Annual Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents in the Property and in particular to insure the maintenance of the Property. Annual Assessments shall include, but are not limited to, funds to cover actual Association costs to insure the repair, replacement and maintenance of equipment, improvements and facilities within the Common Areas, including, without limitation, Common Roads and walking trails as authorized by the Board; service activities such as mowing grass, grounds and landscaping maintenance of the Common Areas; legal and accounting fees, and any fees for management services; reserves for replacement of all Common Area facilities; security; and maintenance and other charges required by this Declaration, or that the Board shall determine to be necessary to meet the primary purpose of the Association.

4.3 **BASIS OF ANNUAL ASSESSMENTS**.. After consideration of current maintenance costs and future needs of the Association, the Board may decrease or increase the Annual Assessment at an amount determined by the Board to cover such costs and needs, including, without limitation, reserves. Notwithstanding the uniform rate of assessment described in Section 4.4 below, the Board may allocate higher rates to higher density projects and products such as Sub Associations and Condominiums.

4.4 **UNIFORM RATE OF ASSESSMENT**. The Annual Assessments shall be fixed at a uniform rate, being the same for each Lot regardless of size or location within the Development.

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4.5 **DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES**.

4.5.1 As to each Lot owned by an Owner other than Declarant, the Annual Assessment shall commence on the date that such Lot is conveyed by Declarant to an Owner.

4.5.2 As long as Declarant holds any voting rights, Declarant, or Declarant's successors and assigns, shall be liable for Annual Assessments equal to seventy-five percent (75%) of the Assessments as set out in Subsection 4.3.1 of this Article IV for unsold and unimproved Lots. For any improved Lots, the Declarant or assigns shall be responsible for one hundred percent (100%) of the Annual Assessments for such Lots.

4.5.3 The Annual Assessment shall be due and payable in advance by each Owner in monthly, quarterly or semi-annual installments as determined by the Board in its discretion. The Association shall collect the Assessments unless otherwise directed by the Board.

4.5.4 The Annual Assessment for the first Assessment year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first assessment year, the Association shall fix the amount of the Annual Assessment at least thirty (30) days in advance of each assessment year, which shall be the calendar year; provided, however, that the Association shall have the right to adjust the Annual Assessment upon thirty (30) days' written notice given to each Owner. Written notice of the Annual Assessment shall be sent as soon as is practicable to every Owner. The Association shall, upon demand by any Owner at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Annual and Special Assessments as to a specified Lot or Unit have been paid and the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.6 **SPECIAL ASSESSMENTS**. In addition to the Annual Assessments provided for above, the Association may levy, in any assessment year, a "**Special Assessment**" (herein so called) on all Lots, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Areas, respond to the unusual emergency needs of the Association as may be expected to appear from time to time, or for such other lawful purpose related to the use of the Common Areas as the Board or the Owners may determine, provided that any such assessment shall have the assent of fifty percent (50%) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Owners and shall set forth the purpose of the meeting.

4.7 **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4.6**. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.6 shall be sent not less than ten (10) days nor more than forty (40) days in advance of the meeting. At the first such meeting called, the presence or proxies of those entitled to cast fifty percent (50%) of all the votes entitled to be cast of the Association shall

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constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice and quorum requirements. In lieu of a meeting, a door to door canvass may be used to get the written consent of fifty-five percent (55%) of the Owners for a proposed Special Assessment.

4.8 **REIMBURSEMENT CHARGES**. In addition to the Annual Assessments and Special Assessments, the Association, by vote of the Board, may impose a charge (a **"Reimbursement Charge"**) upon any Owner for the purposes of reimbursing the Association for all direct and indirect costs incurred by the Association for any remediation or corrective action which is taken in connection with enforcing Sections 9.1 and 11.2.

4.9 **CREATION OF LIEN FOR ASSESSMENTS; EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION**.

4.9.1 Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be secured by a continuing lien upon the Lot and/or Unit against which each such Assessment is made. Each such Assessment, together with such interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

4.9.2 All payments of the Assessments shall be made to the Association at its principal place of business in Smith County, Texas, or at such other place as the Association may otherwise direct or permit. Payment shall be made in full regardless of whether any Owner has any dispute with the Declarant, the Association, any other Owner, or any other person or entity regarding any matter to which this Declaration, the Bylaws or the Articles relate or pertain. Payment of the Assessments shall be both a continuing affirmative covenant personal to the Owner (other than the Declarant) and a continuing covenant running with the land. Each Owner, and each prospective Owner, is hereby placed on notice that such provision may operate to place upon him the responsibility for the payment of Assessments attributable to a period prior to the date he purchased his Lot or Unit in order to protect the Owner's ownership interest in the Lot or Unit, as applicable.

4.9.3 Any Assessment provided for in this Declaration that is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the date of delinquency, the Assessment shall bear interest from the date of delinquency, until paid, at the lesser of (a) the highest rate permitted by applicable law, or (b) the rate of eighteen percent (18%) per annum. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or bring an action to foreclose the lien against the Lot or Unit, as applicable. There shall be added to the amount of such Assessment the late charge, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include said interest and a reasonable attorney's fee, together with costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity including lien foreclosure against such Owner for the collection of such delinquent Assessments. Under no circumstances, however, shall the Declarant or the

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Association be liable to any Owner or to any other person or entity for failure or inability to enforce or attempt to enforce collection of any Assessments.

4.9.4 Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

4.9.5 Upon written request by a Mortgagee, the Association shall provide the Mortgagee with written notice of any default by the Owner mortgagor in the performance of such Owner's obligations hereunder, including payment of any Assessment, which is not cured within thirty (30) days after default; provided that any such requirement of notice shall not impair or affect any rights or remedies of the Association, including exercise of such remedies provided for in this Declaration.

4.9.6 The Assessment lien and the right to seek a foreclosure sale hereunder shall be in addition to and not in substitution for all other rights and remedies that the Association and its successors or assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

4.9.7 The Association, in exercising its remedies hereunder, shall at all times comply with the requirements and limitations contained in the TRPOPA. If there is any conflict between the terms of this entire Section 4.9 and the requirements and limitations of TRPOPA, the TRPOPA will control.

4.10 **SUBORDINATION OF THE LIEN TO MORTGAGE.** The lien securing the Assessments provided for herein shall be subordinate to the lien of any duly recorded purchase money or first mortgage. Sale or transfer of any Lot or Unit or shall not affect the assessment lien. However, the sale or transfer of any Lot or Unit, pursuant to a decree of foreclosure under a mortgage held by a Mortgagee or any proceeding in lieu of foreclosure thereof, shall extinguish the lien for such Assessments as to payments thereof which became due prior to such sale or transfer, except for its pro-rata share resulting from reallocation among all Owners. No sale or transfer shall relieve such Lot or Unit from liability for any Assessment thereafter becoming due, according to the terms herein provided.

4.11 **INSURANCE REQUIREMENTS.**

4.11.1 The Association through the Board, or its duly authorized agent, shall obtain the following types of insurance policies covering the Common Areas and covering all damage or injury caused by the negligence of the Association or any of its agents:

4.11.1.1 property insurance in an amount equal to the full replacement value of the facilities in the Common Areas owned by the Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of

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Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage, and any such other risks as shall customarily be covered with respect to projects similar in construction, location and use;

4.11.1.2 a comprehensive policy of public liability insurance covering all of the Common Area located in the Project insuring the Association, with such limits as it may consider acceptable (and not less than One Million Dollars ($1,000,000) covering all claims for personal injury and/or property damage arising out of a single occurrence), such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location, and use to the Development; and

4.11.1.3 a policy of fidelity coverage to protect against dishonest acts on the part of officers, Directors, trustees and employees of the Association, and all others who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall be of a kind and in an amount not less than three (3) months' Assessments plus reserves.

4.11.2 Premiums for all such insurance authorized by Subsection 4.11.1 shall be a Common Expense payable from Assessments. In the event of damage or destruction by fire or other casualty to any improvements, equipment or facilities in the Common Area covered by insurance written in the name of the Association, the Board shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Common Areas and facilities within the Common Areas to their former condition. All such insurance proceeds shall be deposited in a bank or other financial institution in which the accounts are insured by a Federal government agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board, or by an agent duly authorized by the Board. The Board shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed improvements, equipment or facilities. In the event the insurance proceeds are insufficient to pay all costs of repairing and/or rebuilding to the condition formerly existing, the Board shall levy a Special Assessment against all Owners, as herein provided, to make up any deficiency.

4.11.3 Upon written request to the Association, Mortgagees shall be notified of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

4.11.4 Any decision to not maintain fire and extended coverage on insurable Common Area and facilities within the Common Areas on a current replacement cost basis of one hundred percent (100%) of the insurable value shall require the approval of two-thirds (2/3) of the Mortgagees (based upon one vote for each mortgage owned).

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ARTICLE V
GARDEN VALLEY GOLF CLUB MEMBERSHIP

5.1 **CLUB DUES**. Each Owner shall be required to join and obtain a Sports Membership in the Club. Full golf membership shall be available to Owners subject to any limitations imposed by the Club, but Full golf membership shall not be mandatory for Owners. Membership dues shall be payable directly to the Club and collection of these dues SHALL BE ENFORCED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE IV HEREIN. Builders or contractors who have purchased Lots for construction of a Residential or Commercial Unit are not required to be a member of the Club.

5.2 **CREATION OF LIEN AND PERSONAL OBLIGATION FOR CLUB DUES AND CHARGES**. Membership dues and charges for services of the Club are the personal obligation of each Owner in Garden Valley Addition and by acceptance of a deed to a Lot, whether or not it shall be expressed in any such deed or other conveyance, each Owner is deemed to covenant and agree to become a member of the Club, and to pay to the Club the dues levied by Club for Owner's membership in the Club, and such charges incurred by the Owner for services of the Club as such from time to time may be fixed and established. To the maximum extent permitted by applicable law, the Club dues and charges incurred shall be a charge on the Lot or Unit, as applicable, and shall be secured by a continuing lien upon the Lot or Unit, as applicable. Club dues together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner at the time the Club dues were incurred. The personal obligation for dues and charges shall not pass to the successors in title of the Owner who incurred the dues unless expressly assumed. To the maximum extent permitted by applicable law, the lien for Club dues and charges may be foreclosed in the same manner as the lien for Assessments.

5.3 **ESTABLISHMENT AND CONTROL OF DUES; AND ADVISORY COMMITTEE**. An advisory committee consisting of five (5) Club members, at least two (2) of which must be Sports Club Members, will be appointed by the Board to comment on expenses and provide opinions to the Club Owner in the formulation of Club dues and policies; provided, however, notwithstanding the foregoing, dues, charges and policies will be established by the Club, in its sole discretion.

5.4 **RIGHT OF FIRST OPPORTUNITY TO PURCHASE**. Club Owner covenants and agrees and hereby grants to the Association a right of first opportunity to purchase ("**ROFO**") the Club Facilities Property (or portions thereof) in the event Club Owner elects to sell all or any portion of the Club Facilities Property. In the event Club Owner, in Club Owner's sole and absolute discretion elects to sell all or a portion of the Club Facilities Property, Club Owner shall give the Association written notice (the "**Club Owner's Offer Notice**"), which shall be accompanied by a proposed purchase and sale agreement containing the terms and conditions under which the Club Owner will sell the Club Facilities Property (or the portion thereof) described therein (the "**Offer**"). The Association shall have twenty (20) business days to consider the Offer and respond in writing (the "**Response Notice**") either (a) that the Association accepts the Offer, in which case the Offer, signed by the Association, will be enclosed with the Response Notice, (b) the Association rejects the Offer, or (c) the Association will make the

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counteroffer contained in the Response Notice. If Association chooses (a), the parties will proceed in accordance with the terms of the signed purchase and sale agreement. If the Association chooses (b), the parties will have no future obligations, one to the other, and Club Owner will be free to sell the Club Facilities Property described in the Offer to anyone else the Club Owner chooses. If the Association chooses (c), then the Club Owner may accept the counteroffer or continue to negotiate with the Association, but the period for such negotiations will not exceed thirty (30) days from the date Club Owner receives the counteroffer (the "**Negotiation Period**"). If the parties cannot agree on the terms of a sale and purchase on or before the expiration of the Negotiation Period, then either party can terminate negotiations in writing, at which time the ROFO will be terminated, and Club Owner shall be free to sell the Club Facilities Property described in the Offer to anyone Club Owner chooses. Once the ROFO is terminated in accordance with either (b) or (c) above, or the sale in (a) does not close for any reason other than Club Owner's default, the ROFO will be null and void and of no further force and effect. This ROFO will not apply to any portion of the Club Facilities Property which from time to time will conveyed to Declarant for residential or commercial development. It is intended to apply only to the facilities and the real property on which such facilities are located within the Club Facilities Property.

5.5 **PUT OF FACILITIES TO THE ASSOCIATION**. The Club Owner may from time to time convey to the Association for no charge, and the Association shall accept conveyance thereof, real property and/or facilities within the Club Facilities Property. After such conveyance, the Association shall be responsible for all maintenance and repair obligations related to such facilities.

ARTICLE VI
ARCHITECTURAL CONTROL

6.1 **GENERAL PROVISIONS**. No construction, modification, alteration, or improvement of any nature whatsoever, except for interior alterations not affecting the external structure or appearance of any Unit or other structure, shall be undertaken on or adjacent to any Lot unless and until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant and the ARB. Improvements and modifications that are specifically subject to architectural approval, including without limitation, the construction of the initial structures on a Lot and the painting or alteration of any Residential Unit (including doors, windows, roof); installation of solar panels or other devices; construction of fountains, swimming pools, Jacuzzis, and construction of fences; additions of awnings, shelters, gates, flower boxes, shelves, statues or other outdoor ornamentation; patios, enclosures, walkways, sidewalks, walkovers, docks, and all other modifications, alterations or improvements visible from the Common Roads or other Lots.

6.2 **COMPOSITION OF THE ARB**. The architectural review and control functions of the Declarant shall be administered and performed by the ARB, which shall consist of at least five (5) members who need not be Members of the Association. The Declarant shall have the right to appoint all of the members of the ARB, or such lesser number as it may, in its sole discretion, appoint for so long as it owns any of the Development. Thereafter, members of the

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ARB as to whom Declarant may relinquish the right to appoint, and all members of the ARB subsequent to termination of the Declarant's control, may be the Board or may be a committee appointed by, and shall be serving at the pleasure of, the Board. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board, except that Declarant, to the exclusion of the Board, shall fill any vacancy created by the death, resignation, removal, or other termination of services of any member of the ARB appointed by Declarant.

6.3 **ARB GUIDELINES**. The Declarant has created a set of ARB Guidelines, which are attached as **Exhibit D** and made a part hereof for all purposes, and has sole control of such Guidelines until Declarant no longer owns any of the Development. Subsequent to the termination of the Declarant's control of the ARB, the ARB may recommend to the Board modifications and/or amendments to the ARB Guidelines. Any modification or amendment to the ARB Guidelines shall be consistent with the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board. No Board approval of the ARB Guidelines or any amendments thereto shall be required during the time the Declarant has control of the ARB.

6.4 **POWERS AND DUTIES OF THE ARB**. The ARB shall have the following Powers and Duties:

6.4.1 To require submission to the ARB for approval of preliminary and final plans and specifications for the construction or placement of Proposed Improvements upon any Lot or other part of the Property in accordance with the ARB Guidelines. The ARB may also require submission of samples of building materials and colors proposed for use in the Proposed Improvements and may require such additional information as reasonably may be necessary for the ARB to completely evaluate the Proposed Improvements in accordance with this Declaration and the ARB Guidelines;

6.4.2 To approve or disapprove any Proposed Improvements or change or modification thereto, the construction, erection, performance, or placement of which is proposed upon any Lot or any other part of the Property. Subsequent to the transfer of control of the ARB by the Declarant, any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board within thirty (30) days of such decision for a review thereof. The determination of the Board upon reviewing any such decision shall be final; provided, however, that during the time the Declarant controls the ARB, determination by the ARB shall be final;

6.4.3 To evaluate each application for the total effect, including the manner in which the Lot is developed. This evaluation relates to matters of judgment and taste that cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that Proposed Improvements might meet individual criteria delineated in this Article and the ARB Guidelines and still not receive approval, if, in the sole judgment of the ARB, its overall aesthetic impact is unacceptable. The approval of an application for one Proposed Improvement shall not be

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construed as creating any obligation on the part of the ARB to approve applications involving similar designs for Proposed Improvements pertaining to different Lots;

6.4.4 In addition, any Owner making or causing to be made any Proposed Improvements or additions to the Property or a Lot agrees and shall be deemed to have agreed, for such Owner and his heirs, personal representatives, successors, and assigns, to hold the ARB, the Association, the Board (as a body and the individual Directors), Declarant, and all other Owners harmless from any liability, damage to the Property, and from expenses arising from the construction and installation of any Proposed Improvements. Owners shall be solely responsible for the maintenance, repair, and insurance of any alteration, modification, or change and for assuring that the Proposed Improvements meet with all applicable governmental approvals, building codes, rules, and regulations. Approval by the Declarant and/or the ARB of a Proposed Improvement shall not constitute a basis for any liability of the members of the ARB, the Association, the Board, or Declarant for any reason, including, without limitation, (a) failure of the plans to conform to any applicable building codes or (b) inadequacy or deficiency in the plans resulting in defects in the improvements; and

6.4.5 The ARB is hereby authorized to charge such reasonable fees as it deems necessary to cover the cost of review of the plans and specifications. The ARB will require Owners to post a compliance deposit ("**Compliance Deposit**") in an amount promulgated by the ARB from time to time. The fees and Compliance Deposit amounts are shown on Schedule 1 to the ARB Guidelines, and are payable to the Association before construction may commence. The amount of the Compliance Deposit shall be stated in the ARB Guidelines. The Compliance Deposit shall be refunded upon completion of the Proposed Improvement if all conditions and requirements of this Declaration and the ARB Guidelines are met. In the event that an Owner fails to abide by the conditions and requirements of this Declaration and the ARB Guidelines, the Association may use the Compliance Deposit to cure any defect. For an example, but not a limitation, the Association may use the Compliance Deposit to have construction debris removed from the job site if the Owner fails to do so. The posting of the Compliance Deposit shall not limit the Owner's liability as specified in this Declaration.

6.5 ENFORCEMENT POWERS OF THE ARB.

6.5.1 The ARB reserves the right during construction of the proposed improvements as a part of its approval process, to enter into the Lot to inspect the proposed improvements to assure their compliance with the approved plans and specifications.

6.5.2 If any Proposed Improvements are made without the approval of the ARB or are not in compliance with the approved plans and specifications, then owner shall, upon written demand, cause the Proposed Improvement to be removed or restored within ten (10) days from the date of the written demand to their original conditions, and such owner shall bear all costs and expenses of such restoration or removal, including costs and reasonable attorney's fees of the ARB or the Association, as applicable.

6.5.3 If Owner has not removed or restored or commenced to remove or restore the unapproved Proposed Improvements within the period set forth in Section 6.5.2, the ARB

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shall have the right to institute an action to recover sums due, for damages or to seek injunctive relief to require the Owner to cease, remove, or restore the unapproved Proposed Improvements. It is hereby declared that any violation of the requirements set forth herein may not be adequately compensated by recovery of damages and, accordingly, the ARB, on behalf of the Association, may seek an injunction to restrain a violation or breach or threatened violation or breach.

6.5.4 All the remedies set forth herein are cumulative. No delay, failure, or omission on the part of the ARB in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or a waiver of the right to enforce its rights, powers, or remedies. No right of action shall accrue nor shall any action be brought or maintained by anyone subject to this Declaration against the ARB, the Association, the Club Owner, Declarant or any Owner on account of any failure to bring any action on account of any violation or breach of the provisions of the ARB Guidelines.

6.5.5 In all enforcement actions, the prevailing party shall be entitled to be reimbursed for its attorney's fees, prior to or at trial or on appeal and all reasonable court costs.

6.6 **PROCEDURE FOR APPROVAL OF PLANS**. The ARB shall approve or disapprove the preliminary and final applications for a Proposed Improvement within fifteen (15) days after each has been submitted to it in proper form together with all supporting information. If the plans are not approved within such period, they shall be deemed disapproved. The applications and plans submitted to the ARB shall comply with the ARB Guidelines in effect from time to time, with such variances as are approved by the ARB in its discretion.

6.7 **CONSTRUCTION COMMENCEMENT WINDOW**. By acceptance of a deed for a Lot, each Owner covenants and agrees to obtain architectural approval and initiate construction on and/or development of such Lot as a Residential Unit, Commercial Unit or any other improvements or products permitted in accordance with this Declaration and the ARB Guidelines and all applicable governmental ordinances and requirements, within two (2) years from the date of such deed ("**Construction Commencement Window**"). The Declarant reserves the right and privilege to repurchase the Lot at eighty percent (80%) of the original purchase price, if construction of a Unit has not been initiated on or before the expiration of the Construction Commencement Window (or any valid extension thereof). Such repurchase option shall be exercised by the Declarant giving thirty (30) days' prior written notice to Owner of the Declarant's election to repurchase the Lot at any time after Construction Commencement Window (or valid extension thereof). Such election notice shall specify the time, date, and place of repurchase of the Lot and shall have attached thereto the form of deed to be used to convey the Lot to Declarant. Such deed shall be substantially similar in form as the deed to Owner, containing the same warranties of title and shall be subject to any and all exceptions of record that are then valid and subsisting and affect the Lot. The Declarant shall not be considered an Owner for the purposes of this Section. The option of Declarant to repurchase shall terminate if (a) Declarant has not exercised such right of repurchase within seven (7) years from the expiration of the Construction Commencement Window (or any valid extension thereof) or (b) the affected Owner both (i) obtains and is then possessing an unexpired ARB Construction Approval (as defined in the ARB Guidelines) of the Proposed Improvements, and (ii)

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commences construction of the Proposed Improvements prior to receipt by the affected Owner of the 30-day notice of Declarant's exercise of the option to repurchase. An Owner will have the option to extend the Construction Commencement Window for two (2) successive periods of one (1) year each. Each extension option may be exercised by giving written notice to the Declarant no less than thirty (30) days prior to the expiration of the Construction Commencement Window or the first extension thereof, as applicable, accompanied by the Owner's payment for the applicable extension of an amount equal to five percent (5%) of the purchase price paid for the Lot when such Lot was purchased from the Declarant.

6.8 **LIMITATIONS**. Nothing shall be erected, constructed, planted, or otherwise placed in such a position (subsequent to the initial construction of improvements on the Property by Declarant) so as to create a hazard or block the vision of motorists upon any of the Common Roads, which are part of, adjacent to, or near the Property.

6.9 **INDIVIDUAL UTILITIES**. No individual water well, propane tank, butane tank, gas tank, gas bottle or gas cylinder of any kind will be permitted on, in or under any Lot. Units will be connected to the common water and sewer system lines as soon as practicable after the same are available at the Lot line. No privy, cesspool or septic tank will be placed or maintained in, on or under any Lot except as required by the common sewer system for proper function of such system. All telephone, electric, cable or other service lines on shall be installed underground and shall meet all requirements of the applicable governmental authorities having jurisdiction.

ARTICLE VII

PROTECTIVE COVENANTS

7.1 **RESIDENTIAL PURPOSE ONLY**. Unless otherwise approved for commercial, multifamily or condominium use by the Declarant, each Lot and Residential Unit shall be used exclusively for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanitarium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. No improvement or structure whatever, other than a private Residential Unit, patio walls, swimming pool, and customary outbuildings, garage, servants' quarters or guest house may be erected, placed or maintained on any Lot. All parking spaces shall be used exclusively for the parking of passenger automobiles, except as expressly permitted in Section 7.5.

7.2 **RUBBISH ETC.** No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property. No weeds, underbrush or other unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

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7.3 **ANIMALS**. No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, not to exceed a total of four (4) such animals, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons, and Guinea fowl shall not be deemed as household pets and are expressly prohibited. Notwithstanding the foregoing, however, no individual dogs or other animals deemed by the Board in its sole discretion to be dangerous to persons or other animals shall be raised, bred or kept on any Lot. All pets must be kept fenced in or on a leash. No pets may be permitted to run at large.

7.4 **DEVELOPMENT ACTIVITY**. Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of Lots within the Property.

7.5 **PARKING AND PROHIBITED VEHICLES**.

7.5.1 Parking. Vehicles shall be parked only in the garage or driveway serving the Residential Unit, or in such other paved areas as have been approved by the Board for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving the Residential Unit. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot, four (4) or more hours per day, four (4) or more days in any seven (7) day period. The Board may authorize parking on Common Roads on a temporary basis for visitors and guests, subject to reasonable rules and regulations. No garage shall be modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the ARB. Garage doors visible from any Common Roads within the Property shall remain closed except during ingress or egress or when the garage is actively being used by the Owner of occupant. All garage doors must be equipped with an automatic electric door opener.

7.5.2 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide

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service or to make a delivery to a Residential Unit or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed.

7.6 **COMMERCIAL USE**. No Lot, and no building erected or maintained on any Lot, shall be used for commercial purposes unless approved by the Declarant.

7.7 **ANTENNAE, SATELLITE DISHES AND SOLAR COLLECTORS**. No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus or solar collector panels or equipment upon any Lot unless (a) such apparatus is erected and maintained in such a way that it is screened from the public view at a point in the center of the Common Road right-of-way directly in front of the Residential Unit erected on such Lot, and (b) the Owner has received the prior written approval from the ARB to the size, location and screening of such apparatus.

7.8 **CLOTHESLINES**. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the Common Road.

7.9 **WINDOW TREATMENT**. No aluminum foil, reflective film, signs or similar treatment shall be placed on windows or glass doors.

7.10 **TEMPORARY STRUCTURES**. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent or shack shall be placed on any Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location except, however, that Declarant reserves the exclusive right to erect, place and maintain and to permit builders and Owners to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be deemed necessary or convenient during the period of and in connection with the sales of Lots, construction and selling of residential structures and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders of residential structures on Lots shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales or leasing operations on the Property, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion (as defined by the American Institute of Architects) of his last residential structure on the Property.

7.11 **TRASH RECEPTACLES AND COLLECTION**. All trash receptacles shall be screened by fences or shrubbery so as not to be generally visible by the public, and all such screening must be approved by the ARB. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean

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and sanitary condition. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot in accordance with the ARB Guidelines. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. All woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Residential Units, Common Roads, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers and shall regularly be removed from the Property and shall not be allowed to accumulate thereon. Each Residential Unit shall have a trash compactor in the kitchen. Declarant or the Association, as applicable, will have the right to contract for and designate the trash and refuse removal service company for the Development, and the times and frequency of removal. Each Owner must use and pay for the trash and refuse removal service company so designated.

7.12 **TRUCK WEIGHT LIMIT**. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the Common Roads, driveways or on any Lot.

7.13 **PAINT**. All painted improvements and other painted structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or Residential Unit. approval of the ARB otherwise required for improvements under Article VII shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

7.14 **ATHLETIC FACILITIES**. Tennis court lighting and fencing shall be allowed only with the approval of the ARB. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed within forty feet (40') from the front property line of any Lot in the subdivision without the prior written consent of the ARB.

7.15 **QUIET ENJOYMENT**. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Residential Unit. The use and discharge of firearms, firecrackers and fireworks of any kind is prohibited within the Property.

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7.16 **LIGHTING**. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the ARB.

7.17 **ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, AND SIMILAR ITEMS**. No artificial vegetation shall be permitted on the exterior of any portion of the Property. No exterior sculpture, fountains, flags and birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved by the ARB.

7.18 **BUSINESS USE**. No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Residential Unit, except that an Owner or occupant residing in a Residential Unit may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Residential Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Association, with respect to its development and sale of the Property or its use of any Residential Units which it owns within the Property.

7.19 **TRAFFIC SIGHT AREAS**. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the Common Road shall be permitted to remain on any corner lot within fifteen (15) feet of the point formed by the intersection of the building set back lines of such Lot.

7.20 **MINERAL PRODUCTION**. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

7.21 **EXTERIOR NOISE**. No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

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7.22 **LOT SIZE AND SUBDIVISION**. No subdivision or re-subdivision of any Lot or combination of Lots shall be permitted unless approved by the ARB and the Declarant.

7.23 **CERTAIN APPLIANCES**. Each Residential Unit shall have at all times at least three (3) propane using appliances, and Commercial Units shall have at least two (2) propane using appliances at all times.

ARTICLE VIII
EASEMENTS

8.1 **UTILITY EASEMENTS**. Declarant hereby reserves for itself, its successors, and assigns, and hereby grants to the Association, a nonexclusive perpetual alienable blanket easement for the benefit of the Property upon, across, over, through, and under the Development for ingress, egress, installation, replacement, repair, and maintenance of all utility and service lines and service systems, public and private, including, but not limited to, water, sewer, drainage, irrigation systems, telephones, electricity, television cable or communication lines and systems, and police powers and services supplied by local state and federal governmen Declarant, for itself and its designees, reserves the right to retain title to any and all pip lin cables, or other improvements installed on or within such easements. Upon termi on of Declarant's right to grant such easements, the Association shall have the rig to g nt th easements described herein.

8.2 **DECLARANT'S EASEMENT TO CORRECT DRAI AGE**. or s long as the Declarant is a Class B Member, Declarant hereby reserves f lf, a her y grants to the Association and its designees, a nonexclusive, perpetual bla et easem nt on, over, and under the ground within the Development to maintain and correct, d nage of rface waters and other erosion controls in order to maintain reasonable standards of lth fety, and appearance. Such right expressly includes the right to cut any tre bushes, or shrubbery; make any gradings of the soil; or to take any other similar action reasonably ecessary, following which Declarant or the Association, as applicable, shall restore the aff d pr rty to its prior condition as nearly as practicable. The Declarant or Associati sha gi asonable notice of intent to take such action to all affected Owners, unless in its o inion an mergency exists which precludes such notice. The right granted hereunder may be erci d at the sole option of Declarant or the Association and shall not be construe to oblig Declarant or the Association to take any affirmative action in connectio herew h. A r Declarant is no longer a Class B Member, the Association shall continue to hav ll o rights reserved to the Declarant hereunder. Any costs incurred to accompli h a of th foregoing will be a Common Expense.

8.3 **EASEME FOR NINTENTIONAL ENCROACHMENT**. The Declarant hereby reserves an exclusive sement for the unintentional encroachment by any Unit and related improvemen on Lot upon the Common Areas or vice-versa caused by or resulting from, construction, pair, ifting, settlement, or movement of any portion of the Development, which exclusi seme shall exist at all times during the continuance of such encroachment which ease nt is a urtenant to the encroaching property to the extent of such encroachment.

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ARTICLE IX
MAINTENANCE RESPONSIBILITIES

9.1 **OWNER MAINTENANCE RESPONSIBILITY**. Except as expressly provided elsewhere in this Declaration, each Owner is obligated to and responsible for, at its sole cost and expense, the performance of all maintenance, repair, and restoration in connection with that Owner's Lot and all improvements thereupon, including, without limitation, prompt removal of all litter, trash, refuse and waste; mowing grass on a regular basis (at least once per week during the growing season); periodic tree and shrub pruning; adequately watering landscaped areas; keeping all exterior lighting facilities in working order and in good repair; keeping lawn, garden and landscaped areas alive and free of weeds; keeping parking areas and driveways in good repair; complying with all governmental health and police requirements; cleaning of landscaped areas lying between Common Roads and the Owner's Lot unless such Common Roads or landscaped areas are expressly designated to be Common Areas to be maintained by the Association or applicable governmental authority. Each Owner shall maintain the exterior of all buildings and improvements on his Lot in a good condition and repair so as to present a neat and clean appearance upon the Lot, including, without limitation, painting, repairing, replacing, and caring for roofs, gutters, downspouts and exterior building surfaces. Owners shall further assure that no weeds, underbrush, or other unsightly vegetation is permitted to grow or remain upon his Lot or the right-of-way existing between the property on his Lot and the paved surface of any Common Road. No refuse piles or unsightly objects shall be allowed to be placed on or permitted to remain anywhere on any Lot or the right-of-way existing between his Lot and the paved surface of any Common Road. The preceding sentence shall apply to both improved and unimproved Lots. In the event the maintenance or repair of a Lot or Unit is not maintained as required by this Declaration or the Articles or Bylaws of the Association, the Association is authorized to do so, as provided in Section 9.2 below.

9.2 **ENFORCEMENT OF OWNER MAINTENANCE RESPONSIBILITY**. In the event that any Owner fails or refuses to maintain the Owners' Lot in the manner set forth above, after written notice to Owner, the Association may authorize its agents to enter upon the Lot or the right-of-way existing between Owner's Lot and the paved surface of any road and perform any necessary maintenance, the cost thereof shall be assessed against the Owner of the Lot as a Reimbursement Charge. In the event that any Owner leases his Lot and the improvements thereon to a tenant, the Association shall notify the Owner and it shall be the Owner's responsibility to assure that the maintenance is performed.

9.3 **ASSOCIATION MAINTENANCE OBLIGATIONS**. Notwithstanding any other specific requirements set forth therein, the Association is obligated to and responsible for performing the following services and for the benefit of all Lots and Owners to the extent permitted by applicable law:

9.3.1 Common Areas. Maintenance of all Common Areas including roadway, Common Roads, lighting, nature preserves, medians, and landscaping of Common Road right-of-ways and public properties located within reasonable proximity to the Property such that deterioration would affect the appearance of the Property as a whole; provided, however, that

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the unpaved portion of any right-of-way located on a Lot shall be maintained by the Owner of that Lot and not by the Association, unless it is a walking trail.;

9.3.2 Lake Amenities. Maintenance of all amenities constructed by the Association and used in connection with the Lakes;

9.3.3 Limited Access. Employment of access control personnel and devices, such as gates and such patrols as the Association deems reasonable, and maintenance of electronic and other limited security devices as deemed appropriate from time to time by the Association, it being understood that only limited security is reasonably possible, and the Association shall not be liable to any Owner for failure of any security measures provided, authorized or paid for by the Association;

9.3.4 Insurance. To provide liability and hazard insurance covering improvements and activities in and on the Common Areas, as provided in Section 4.12 above;

9.3.5 Taxes. To pay taxes and assessments against the Common Areas and Common Roads and upon request of an Owner or Mortgagee, to furnish evidence thereof;

9.3.6 Improvements. To construct improvements in and on the Common Areas for any purposes as may be required or authorized elsewhere in this Article;

9.3.7 Administration. To provide administration, accounting and communication services as are appropriate to facilitate and operate the functions of the Association;

9.3.8 Intermediate Area. To provide all necessary maintenance in, on or under the area between Common Areas and adjoining public right-of-way easements and the Common Areas between any walking trails and Lots;

9.3.9 Walking Trails. To provide all necessary maintenance in, on or under the Walking Trails shown on the plats filed for the Development; and

9.3.10 General.

9.3.10.1 To take any and all actions necessary to enforce this Declaration and the covenants and restrictions affecting the Properties and perform any of the functions or services delegated to the Association in any other covenants or restrictions applicable to the Property.

9.3.10.2 To provide such other services that in the judgment of the Board are necessary or desirable to carry out the Association's duties under the terms of this Declaration and to keep any Common Areas or other property serving the Members of the Association neat and attractive and to preserve or enhance its value, to eliminate fire, health, or safety hazards, and such other services or facilities which in the judgment of the Board may be of general benefit to the Members and the Property.

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9.4 **SUB-ASSOCIATION MAINTENANCE OBLIGATIONS**. In the event an Sub-Association is responsible for certain exterior maintenance, as set forth in any supplemental declaration, and such Sub-Association shall fail to maintain the common areas for which it is responsible, in a manner satisfactory to the Board, the Association, then the Association shall have the right, through its agents and employees, to enter upon said Unit or common areas to repair, maintain, and restore said common areas, including landscaping. The cost of such maintenance and repair shall be a Reimbursement Charge against either or both of (a) all Units subject to such supplemental declaration and/or (b) the common areas owned by such Sub-Association, at the Association's option.

9.5 **OPTIONAL SERVICES**. Any one (1) or more of the following may be provided by the Association (but no obligation shall exist to provide any of the following) for the benefit of all Lots and all Owners:

9.5.1 Recreation. To conduct recreation, sports, craft, and cultural programs of interests to Owners and their guests;

9.5.2 Lawn Care. To provide lawn maintenance;

9.5.3 Pest Control. To provide exterior and interior pest control services;

9.5.4 Safety Equipment. To provide safety equipment for fire and other emergencies;

9.5.5 Improvements. To construct improvements in, on or under the Common Areas for any of the purposes required under this Article;

9.5.6 Communications. To provide communication services informing Members of activities;

9.5.7 Recreation Areas. To provide playfields, tennis facilities, swimming pools, bicycle paths, sidewalks, leisure trails, parks, wildlife areas, fishing facilities, and rest rooms serving the Development;

9.5.8 Utilities. To provide water irrigation and sewage facilities, and any other Utilities if not adequately provided by a private or public utility in Smith County or some other public body;

9.5.9 Walking/Bicycling Areas. To provide and maintain sidewalks, walking paths or trails, bicycle paths, and nature paths; and

9.5.10 Flood Insurance. To provide for obtaining voluntary flood insurance on a pooled or non-pooled basis covering damage to structures on Lots, and to determine the appropriate method and procedures for making such coverage available to Owners and for allocating the costs thereof (including, without limitation, premiums and administrative costs) among the insured based upon the relative value of the coverage received; provided, however

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that in providing any such insurance, the Association and its Directors shall have no liability for failing to obtain or maintain such insurance properly in force.

9.5.11 Other. To provide any other service or benefit not specifically set forth above.

9.6 **LOT LANDSCAPING AND MAINTENANCE**. In addition to the maintenance of the Common Areas, the Association may provide for the benefit of the Owners if they so desire or contract to provide for charges to be determined by the Board, routine landscaping maintenance for Lots and/or Units, as applicable, in a manner and with such frequency as is consistent with good property management. Such maintenance shall include lawn mowing and maintenance and care (but not replacement) of trees, shrubs, grass, and other similar green areas lying within the Lots.

9.7 **LIMITED ACCESS/ROVING PATROLS**. The Association shall establish certain procedures with respect to access and operation of the Property from time to time. As part of the charges included within the Assessments, each Owner will be obligated to pay a portion of the expenses for maintaining limited gated access to and/or roving security patrols within the Property. No representation, guaranty, or warranty is made, nor assurance given, that the limited access system and possible presence of roving patrols and/or other procedures for the operation of the Property will prevent injury or damage to person or property. Neither the Development, the Club Owner, the Association, the ARB, nor any of their directors, officers, employees, agents, or shareholders shall be liable or responsible for any personal injury or death or for any loss or damage to property which occurs within the Property regardless of whether it is due to the failure of any limited gated access system, the inadequacy of any roving security patrols, or any other procedures for operation of the Property adopted from time to time.

ARTICLE X
GOLF COURSE PROVISIONS

10.1 **GOLF COURSE PLAY EASEMENT**. There is hereby granted to the Club Owner and its successors, independent contractors, agents, members, guests, and invitees (collectively, the "**Golf Course Users**"), a non-exclusive easement over and across the Property for the following purposes (the "**Golf Course Easement**"):

10.1.1 Retrieval of golf balls, including the right to enter on the Property and any lot created thereon, for that purpose, provided the right to retrieve golf balls shall only extend to any unfenced portion of the Property or lots, and the person retrieving the golf balls shall do so in a reasonable manner and will repair any damage caused by entry onto the Property or lot to retrieve the golf ball.

10.1.2 Flight of golf balls, as part of the normal play of golf on the golf course(s) located on the Club Facilities Property (the "**Golf Course**"), over, across, and upon the Property.

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10.1.3 Doing of every act necessary and incident to the playing of golf and other recreational activities incidental to golfing on the Golf Course, including, but not limited to, the operation of lighting facilities for operation of driving range, and golf practice facilities during hours of darkness, and the creation of usual and common noise levels associated with such recreational activities. All exterior lighting for the driving range shall be directed downwards and away from adjacent Residential Units so as to minimize the impact or such Residential Units;

10.1.4 Creation of noise related to the normal maintenance and operation of the Golf Course, including, but not limited to, the operation of mowing and spraying equipment. Such noise may occur from early morning until late evening; and

10.1.5 An easement for the over spray of herbicides, fungicides, pesticides, fertilizers, and water (collectively, "**Sprays**") over portions of the Property located adjacent to the Golf Course, provided that the use of all such Sprays shall conform to their recommended specifications and shall not violate any applicable environmental laws, both state and federal.

10.2 **WAIVER AND RELEASE.** Declarant, for itself and each and every subsequent owner of all or portions of the Property, hereby acknowledges and agrees that the existence of one or more golf courses on the Club Facilities Property are beneficial and highly desirable; however, each such Owner acknowledges and agrees that portions of the Property located adjacent to the Golf Course are subject to the risk of damage or injury due to errant golf balls and certain easements for the benefit of the Golf Course. Declarant for itself and each subsequent owner of all or portions of the Property, their successors and assigns, hereby waives, relinquishes, discharges and covenants not to sue with respect to any claim related to, assumes the risk of damage and injury arising from, and hereby releases Club Owner and its respective successors and assigns, from any and all liability for damage or injury caused by errant golf balls in, on, or around the Property, arising from, directly or indirectly, golf balls flying, landing, hitting, or resting in or around the Property. The above waiver, covenant, and release shall not be construed to extend to the release of the golfer who actually hits an errant golf ball. In addition, neither Declarant, nor the Club Owner, shall be liable for any injury or damage to any person or property caused by the elements or Club Owner resulting from any rain or any surface water, or other drainage, which may leak or flow from any portion of the Golf Course Property, or caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility which is the responsibility of the Declarant or the Club Owner.

10.3 **LOTS ADJACENT TO GOLF COURSE.** Any Proposed Improvement, including without limitation, fences, garages, pools, spas, cabanas, tennis courts, and basketball courts, fence and landscaping constructed, planted or installed on a Lot that is adjacent to the Golf Course shall, in addition to ARB Approval, require the approval of the Club Owner. The Owner shall submit preliminary and finals plans to the Club Owner at the same time as the same are submitted to the ARB. The Club Owner shall approve or disapprove the preliminary and final applications for any Proposed Improvement to a Lot adjacent to the Golf Course within the same time period permitted for ARB review and approval under the ARB Guidelines. If the plans submitted to the Club Owner are not approved by the Club Owner within the period(s) provided for ARB Approval in the ARB Guidelines, then they shall be deemed disapproved.

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10.4 **NO RIGHTS TO CLUB.** No Owner shall have any proprietary rights, equity rights, right of first refusal, prescriptive easements, or property rights of any nature in the Club, only a revocable "license to use" the Club subject to the terms and conditions in the Club Membership Plan, Club Membership Agreement and Application for the type of membership purchased by the Owner, and the Rules and Regulations of the Club.

10.5 **GOLF COURSE VIEW IMPAIRMENT.** Neither the Declarant, nor the Club Owner guarantee or represent that any view over and across the Golf Course from Lots will be preserved without impairment. The Club Owner shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course, as well as to construct safety or security-related improvements such as fences and screens, from time to time. In addition, the Club Owner may, in its sole and absolute discretion, change the location, configuration, size and elevation of trees, bunkers, fairways and greens, or holes on the Golf Course from time to time. Any such additions, improvements or changes to the Golf Course may diminish or obstruct any view from the Lots. Declarant, Club Owner, all Owners and any other owners of any portion of the Property expressly acknowledge and agree that there shall be no express or implied easements for view purposes or for the passage of light and air for the benefit of any portion of the Prop

10.6 **INTERFERENCE WITH GOLF COURSE.** Owners adjacent to the Golf Course areas, as well as their families, tenants, guests, invitees and pets shall be obligated to refrain from any actions which would distract from the golf play on the Golf Course. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with Golf Course play, playing of loud radios, televisions, stereos, or musical instruments, running or walking on the Golf Course, picking up balls, or similar interference with golf play. Owners, as well as their families, tenants, guests, invitees and pets, shall have no right of vehicular or pedestrian access to any portion of the Club Facilities Property where the Golf Course is located, including without limitation no access for the right of jogging or other exercise activities, except to play golf in accordance with the Rules and Regulations of the Club.

10.7 **APPLICABILITY OF COVENANTS, CONDITIONS AND RESTRICTIONS.** Except as set forth in Sections 11.1-11.7 herein, the covenants, conditions and restrictions set forth herein shall not affect or bind the Club Facilities Property. The Club Facilities Property shall not be subject to assessment or to the payment of any other charges, costs or fees to the Association. The Golf Course shall be separate and distinct from the Property and the Association and shall be governed by its own membership application process, Rules and Regulations and Membership Plan. The provisions set forth in Sections 11.1-11.7 herein shall not be modified or amended without the prior written consent of the Club Owner.

ARTICLE XI
LAND AND WATER RIGHTS

11.1 **OWNERSHIP OF LAKES.** The lakes ("**Lakes**") within the Property will be owned by the Club Owner, but shall be available for use by the Owners pursuant to rules and

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regulations promulgated by the Association and the Club Owner. Club Owner shall have the right, but not the obligation to transfer title to the Lakes to the Association for no charge, and the Association shall accept transfer of the Lakes. After such conveyance, the Association shall be responsible for all maintenance and repair obligations related to such facilities, and the Association shall, at Club Owner's option, enter into a management agreement with Club Owner granting Club Owner (a) an irrevocable easement for access to the Lakes and (b) the right to manage the operation, maintenance and repair obligations for the Lakes assumed by the Association.

11.2 **MAINTENANCE OF LAKE EMBANKMENTS AND BOTTOMS**. The Club Owner responsible for and obligated to monitor, police, maintain, and control the water level and quality of the Lakes and shall maintain all Lakes. The Club Owner shall have the power and right as it deems appropriate, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any Lakes, as well as to maintain any drainage device and/or water level devices so as to insure compliance with applicable governmental regulations as they exist from time to time. The Owner of the land adjacent to the water edge of the Lakes ("**Adjacent Owner**") shall maintain the embankment to the water edge as such level shall rise and fall from time to time. Maintenance of the embankment shall be conducted so that the grass, planting, or other lateral support of the embankment shall exist in a clean and safe manner and so as to prevent erosion. If the Adjacent Owner shall fail to maintain the embankment, the Club Owner shall have the right, but not the obligation, to enter onto the Adjacent Owner's Lot and perform the maintenance at the expense of the Owner, which expense shall be a Reimbursement Charge against the Owner and his Lot as provided in Section 4.8.

11.3 **LAKE IMPROVEMENTS AND AMENITIES**. In the event that Declarant, any entity designated by the Declarant, or the Association shall construct any bridges, docks, or other improvements that may extend over or into the Lakes, the Association shall maintain any and all improvements in good repair and condition. No Owner, except the Declarant, its designee, Club Owner or the Association, shall be permitted to construct any dock, or any other improvement, permanent or temporary, on, over, or under any Lakes without the written consent of the Association and the Club Owner, which consent may be withheld for any reason.

11.4 **EASEMENTS**. The Owners' use and access to the Lakes shall be subject to and limited by the rules and regulations of the Association and the Club and the easements reserved in Article VII. The use of the Lakes shall be limited to such uses as the Club Owner shall permit from time to time, including fishing and/or recreational use. The Association is hereby granted a nonexclusive easement for ingress and egress over the Lakes and a parcel of land extending twenty feet (20') from the water edge for the purpose of providing the maintenance required herein and the Adjacent Owners are hereby granted such nonexclusive twenty (20') foot easement for the purpose of providing any maintenance to the embankment.

11.5 **LAKE USE RESTRICTIONS AND COVENANTS**. In connection with the use of any Lakes, the following restrictions shall apply:

11.5.1 No boats of any kind shall be permitted without approval of the Club Owner on any Lake;

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11.5.2 No bottles, trash, cans, or garbage of any kind or description shall be placed in any Lake;

11.5.3 No activity shall be permitted on any Lake that may become an annoyance or nuisance to the adjacent property and the Owners thereof. The Club Owner's determination whether any activity constitutes an annoyance or nuisance shall be final;

11.5.4 No person or entity, except Declarant, or the Club Owner, shall have the right to pump or otherwise remove any water from any Lake for the purpose of irrigation or other use;

11.5.5 There shall be no fishing permitted from bridges, streets, or right-of-ways, except as expressly permitted by the Association or the Club Owner. Only Owners, residents, and guests shall be permitted to fish in the Lakes and only in areas so designated and only in accordance with government regulations and rules promulgated by the Association and the Club Owner;

11.5.6 Any pesticides, herbicides, and fertilizers that may drain into the Lakes may be used only with the prior approval of the Board and the Club Owner. In addition, it is recommended that the use of chemical fertilizers be limited and natural organic fertilizers be encouraged; however, the Board and the Club Owner have the power to specifically dictate which pesticides, herbicides and fertilizers may be used.

11.5.7 The Board and the Club Owner shall be entitled to establish, amend, or modify rules and regulations governing the use of the Lakes, and the Association and the Club Owner will cooperate with each other to promulgate a uniform set of rules for use of the Lake and any amenities to the Lakes.

11.6 **INDEMNIFICATION**. In connection with the platting of the various parts of the Development or obtaining permits necessary to develop the Development, the Declarant may assume or may be required to assume certain obligations for the maintenance of the Common Areas or the Common Roads, or parts thereof. The Declarant hereby assigns to the Association and the Association hereby assumes all the obligations of the Declarant under the Plat, applicable permits, or under any applicable governmental regulations and for any and all obligations for the maintenance of Lakes, Common Areas or the Common Roads, or parts thereof, within the Development or any other property annexed as permitted in Section 12.1. The Association further agrees that subsequent to the recording of this Declaration, it shall indemnify and hold Declarant harmless from such actions, damages, liability, and expense in connection with loss of life, bodily or personal injury or property damage or other damage arising from or out of any occurrence, in, upon, under or at the Common Areas, or arising from the maintenance of the Lakes, Common Areas or the Common Roads, or parts thereof, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants, or licensees, but not including any liability occasioned wholly or in part by the acts of the Declarant or the Club Owner, its successors, assigns, agents, or invitees.

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ARTICLE XII
ANNEXATIONS

12.1 **FURTHER DEVELOPMENT OF THE PROPERTY**. Additional commercial and residential subdivisions and Common Areas may be created on the Property by Declarant or Club Owner in, from or within the Property, and subjected to the Declaration by supplemental declarations filed by the Developer and/or the Club Owner, as applicable.

12.2 **DECLARANT'S RIGHTS TO ANNEX ADDITIONAL PROPERTY**. Declarant shall have the right, without the consent of any other Owners or any Mortgagee, to bring within the scheme of the Declaration, in one (1) or more future stages or additions of the Property, additional properties within fifteen (15) years of the date of recording of this Declaration. Nothing in this Declaration shall be construed to represent that Declarant, its successors, or assigns, are under any obligation to add or annex additional property to the Property subject to this Declaration. After the Declarant is no longer a Class B Owner, additional Property may be annexed with the consent of fifty percent (50%) of the Members. Club Owner shall have the right, but not the obligation, without the consent of any of the Owners to bring within the scheme of the Declaration one or more additions to the Property as part of the Club Facilities Property within fifteen (15) years of the date of recording this Declaration.

12.3 **ARCHITECTURAL STANDARDS AND ASSESSMENTS**. All such additions shall be developed in a manner similar to the development of the existing Property in accordance with a general plan of development under which the architectural standards prevailing within the existing Property will be continued in such annexed properties and the Units within the annexed properties will become subject to Assessment in the same manner as then prevailing for the existing Property. All the provisions of this Declaration shall apply to the Property being annexed with the same force and effect as if said Property were originally included in this Declaration as part of the original Property.

12.4 **DOCUMENTATION**. The additions authorized under this Section shall be made by filing of record: (a) Supplemental Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional property which shall (i) extend the scheme of the covenants and restrictions of this Declaration to such property and (ii) provide that the proportionate ownership interests in the Common Areas of the Owners by virtue of Association membership immediately prior to the filing of such Supplemental Declaration shall be equal to the number of Units owned by such Owner divided by the total number of Lots within the Property then subject to this Declaration after such annexation; and (b) a deed from Declarant or owner of the additional properties to the Association that shall convey to the Association all of the area within such additions that are Common Areas for the benefit and use of the Owners, with reservation of Declarant's rights set forth in Article VIII.

ARTICLE XIII
GENERAL PROVISIONS

13.1 **ENFORCEMENT**. The Association or the Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants,

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reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, Articles of Incorporation, and ARB Guidelines. Failure by the Association or the Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.2 **SEVERABILITY**. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall not affect any other provision, which shall remain in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

13.3 **AMENDMENT**.

13.3.1 During the Construction and Sale Period, Declarant may amend this Declaration without the consent of any Owner. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or if the Association ceases to exist the Owner of any Lot or Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. After the expiration of the Construction and Sale Period, this Declaration may be amended during the first thirty (30) year period by an instrument signed by Owners of not less than sixty-seven percent (67%) of the Lots in the Property and thereafter by an instrument signed by Owners of not less than fifty percent (50%) of the Lots in the Property. Any amendment must be properly recorded in the Deed Records of Smith County, Texas.

13.3.2 However, notwithstanding the above, any amendment hereto or to the Bylaws or to the Articles of Incorporation (i) to change the method of determining the obligations, Assessments, dues, or other charges that may be levied against a Lot or Unit Owner, or (ii) to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the exterior maintenance of the Units or Common Areas shall have the additional approval of sixty-seven percent (67%) of the Mortgagees (based upon one vote for each mortgage owned).

13.3.3 The Declarant reserves the right during the Construction and Sale Period, without joinder or consent of any Owner or Mortgagee, to amend this Declaration or the Bylaws by an instrument in writing duly signed, acknowledged, and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of any State or local governmental body, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, or Federal Housing Administration, provided that no such amendment shall change the vested property rights of any Owner.

13.4 **INTERPRETATION**. Whenever used in the Declaration, Bylaws, and Articles or any rules adopted by the Association, unless the context provides otherwise, a reference to a

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gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate. The necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals in all cases shall be assumed as though fully expressed in each case.

13.5 **CAPTIONS**. 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.

13.6 **ARBITRATION**. Unless prohibited by applicable law, any dispute between Owners and/or the Association shall be subject to arbitration in accordance with the rules of the American Arbitration Association.

13.7 **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.

13.8 **AMENDMENT AND RESTATEMENT**. This Declaration amends, completely restates and supercedes the First Covenants and the Second Covenants. The Dedication is hereby terminated in its entirety and is of no further force and effect.

[SIGNATURE PAGE FOLLOWS]

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EXECUTED this 20th day of MAY, 2005.

DECLARANT:

GARDEN VALLEY DEVELOPMENT PARTNERS, LTD.

BY: LEGACY CAPITAL PARTNERS, LTD.,
a Texas Limited Partnership,
the general partner

By: LEGACY CAPITAL COMPANY,
a Texas corporation,
its general partner

By: _____
Steven D. Saxon, President

CLUB OWNER:

GARDEN VALLEY PARTNERS, LTD.

BY: LEGACY CAPITAL PARTNERS, LTD.,
a Texas Limited Partnership,
the general partner

By: LEGACY CAPITAL COMPANY,
a Texas corporation,
its general partner

By: _____
Steven D. Saxon, President

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CONSENT:

AGREED AND ACCEPTED BY:

FRACTIONAL PARTNERS, L.P.

By: **Garden Valley Partners, LTD.**
A Texas Limited Partnership,
its general partner

By: **Legacy Capital Partners, LTD.,**
A Texas Limited Partnership,
its general partner

By: **Legacy Capital Company,**
A Texas corporation,
its general partner

By: _____
Steven D. Saxon, President

THE STATE OF TEXAS

COUNTY OF SMITH

This instrument was acknowledged before me this 5th day of May, 2005, by STEVEN D. SAXON, President of LEGACY CAPITAL COMPANY, a Texas corporation, general partner of LEGACY CAPITAL PARTNERS, LTD. a Texas limited partnership, general partner of GARDEN VALLEY PARTNERS, LTD, a Texas limited partnership, general partner of FRACTIONAL PARTNERS, L.P.

_____
Notary Public in and for the State of Texas

SANDRA E. LOFTON
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Expires 12-30-2006

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THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on this 20th day of ~~April~~ May, 2005, by STEVEN D. SAXON, President of LEGACY CAPITAL COMPANY, a Texas corporation, general partner of LEGACY CAPITAL PARTNERS, LTD., a Texas limited partnership, general partner of GARDEN VALLEY PARTNERS, LTD., a Texas limited partnership on behalf of said corporation and said limited partnerships.

MELISSA L. LONG
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
MARCH 17, 2006

Melissa L. Long
Notary Public in and for the State of Texas

Melissa L. Long
Notary's Name: Typed or Printed

My Commission Expires: 3/17/06

THE STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on th 20th y of ~~April~~ May, 2005, by STEVEN D. SAXON, President of LEGACY CAPITAL C PANY, a Texas corporation, general partner of LEGACY CAPITAL PARTNERS, TD., a Texas limited partnership, general partner of GARDEN VALLEY DEVELOPMENT RTNERS, LTD., a Texas limited partnership, on behalf of said corporation and limited partnerships.

MELISSA L. LONG
NOTARY PUBLIC STATE OF TEXAS
COMMISSION EXPIRES:
MARCH 17, 2006

Melissa L. Long
Notary Public in and for the State of Texas

Melissa L. Long
Notary's Name: Typed or Printed

My Commission Expires: 3/17/06

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
FOR
GARDEN VALLEY ADDITION
SMITH COUNTY, TEXAS

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Tract No. 1

All of that certain lot, tract or parcel of land, part of the Alex G. Hale Survey, Abstract No. 425, the James H. Sanders Survey, Abstract No. 861, the J. H. Thornton Survey, Abstract No. 982, Smith County, Texas, being part of that certain called 722.6614 acre tract described in a deed from Otaka, Inc. to Garden Valley Resort, Inc. on December 31, 1994, recorded in Volume 3613, Page 138 of the Land Records of Smith County, Texas, and being more completely described as follows, to-wit:

BEGINNING at a railroad spike (found) for the westerly Southwest corner of the above mentioned Thornton Survey and 722.6614 acre tract, the westerly Southeast corner of the above mentioned Sanders Survey, in the North line of the Memucan Hunt Survey, Abstract No. 491, and in the centerline of County Road No. 424;

THENCE Northerly with the northerly West line of said Thornton Survey and 722.6614 acre tract, southerly East line of said Sanders Survey, the centerline of County Road No. 424, as follows: North 00 deg. 01 min. 15 sec. East – 1359.07 ft. to ½" iron rod (found) for the Northwest corner of said Thornton Survey and an inner corner of said Sanders Survey, North 00 deg. 48 min. 29 sec. East – 225.99 ft., North 10 deg. 03 min. 51 sec. East – 133.42 ft., North 23 deg. 49 min. 41 sec. East – 401.35 ft., North 28 deg. 55 min. 41 sec. East – 358.62 ft., North 38 deg. 34 min. 13 sec. East – 125.21 ft., North 52 deg. 03 min. 58 sec. East – 89.22 ft., North 60 deg. 33 min. 54 sec. East – 1120.55 ft., North 55 deg. 06 min. 20 sec. East – 140.14 ft., North 49 deg. 32 min. 22 sec. East – 6.75 ft. and North 41 deg. 52 min. 41 sec. East – 150.08 ft. to a ½" iron rod (found) for corner in the South right-of-way of F. M. Highway No. 1995;

THENCE South 70 deg. 11 min. 00 sec. East with the South right-of-way of said F. M. Highway No. 1995, a distance of 2137.35 ft. to a ½" iron rod (set) for the P. C. of a curve to the right;

THENCE Southeasterly continuing with the South right-of-way of said F. M. Highway No. 1995, and with said curve to the right whose central angle is 11 deg. 50 min. 00 sec., radius is 2824.89 ft., tangent is 292.75 ft., chord is South 64 deg. 16 min. 00 sec. East – 582.39 ft., a distance of 583.43 ft. to a ½" iron rod (set) for the P. T. of same;

THENCE South 58 deg. 09 min. 11 sec. East continuing with the South right-of-way of said F. M. Highway No. 1995, a distance of 153.82 ft. to a ½" iron rod (set) for the P. C. of a curve to the right;

THENCE Southeasterly continuing with the South right-of-way of said F. M. Highway No. 1995, and with said curve to the right whose central angle is 27 deg. 47 min. 04 sec., radius is 1392.48 ft., tangent is 344.40 ft., chord is South 44 deg. 15 min. 39 sec. East – 668.66 ft., a distance of 675.26 ft. to a ½" iron rod (set) for the P. T. of same;

THENCE South 30 deg. 22 min. 07 sec. East continuing with the South right-of-way of said F. M. Highway No. 1995, a distance of 1363.20 ft. to a ½" iron rod (set) for the P. C. of a curve to the left;

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THENCE Southeasterly continuing with the South right-of-way of said F. M. Highway No. 1995, and with said curve to the left whose central angle is 24 deg. 25 min. 39 sec., radius is 1185.91 ft., tangent is 256.70 ft., chord is South 42 deg. 34 min. 56 sec. East – 501.78 ft., a distance of 505.60 ft. to a ½" iron rod (found) for corner in the northerly East line of the said 722.6614 acre tract;

THENCE South 00 deg. 44 min. 40 sec. West with the northerly East line of said 722.6614 acre tract, crossing County Road No. 422, and continuing for a total distance of 475.27 ft. to a ½" iron rod (found) for the easterly Southeast corner of same, said point being in the North line of the David L. Havens tract described in Volume 3202, Page 678;

THENCE Westerly with the easterly South line of the above mentioned 722.6614 acre tract, the North line of said Havens tract, and generally with County Road No. 422, as follows: North 89 deg. 28 min. 20 sec. West – 2210.55 ft. and North 89 deg. 24 min. 39 sec. West – 510.10 ft. to a ½" iron rod (found) for the Northwest corner of said Havens tract, an inner corner of said 722.6614 acre tract;

THENCE South 00 deg. 33 min. 22 sec. East with the southerly East line of said 722.6614 acre tract, the West line of said Havens tract, and generally with said County Road No. 422, a distance of 2060.20 ft. to a nail (found) for the westerly Southeast corner of said 722.6614 acre tract, in the South line of the Hale Survey, the North line of the Tyre Buckley Survey, Abstract No. 74;

THENCE North 89 deg. 55 min. 22 sec. West with a middle South line of said 722.6614 acre tract, the South line of said Hale Survey, the North line of said Buckley Survey, a distance of 1119.96 ft. to the Northwest corner of same, the Southwest corner of said Hale Survey, the easterly Southwest corner of said 722.6614 acre tract, the East line of said Thornton Survey, the East line of the Annie L. Hardaway 50.43 acre tract described in Volume 1387, Page 564;

THENCE North 00 deg. 17 min. 59 sec. East with the West line of said Hale Survey, the southerly West line of said 722.6614 acre tract, the East line of said Thornton Survey, the East line of said 50.43 acre tract, a distance of 1067.25 ft. to a ½" iron rod (found) for the Northeast corner of same, an inner corner of said 722.6614 acre tract;

THENCE North 86 deg. 49 min. 04 sec. West with a middle South line of said 722.6614 acre tract, the North line of said 50.43 acre tract, a distance of 2609.61 ft. to a ½" iron rod (found) for the Northwest corner of same, a middle Southwest corner of said 722.6614 acre tract, in the southerly West line of said Thornton Survey, the East line of said Hunt Survey;

THENCE North 01 deg. 11 min. 31 sec. East with the middle West line of said 722.6614 acre tract, the southerly West line of said Thornton Survey, the East line of said Hunt Survey, a distance of 1815.12 ft. to a rock (found) for the Northeast corner of same, an inner corner of said Thornton Survey and 722.6614 acre tract;

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THENCE North 89 deg. 30 min. 51 sec. West with the westerly South line of said Thornton Survey and 722.6614 acre tract, the North line of said Hunt Survey, a distance of 837.53 ft. to the place of beginning, containing **611.545 acres** of land, of which 2.904 acres is within the right-of-way of County Road No. 424, 3.630 acres is within the right-of-way of County Road No. 422.

Tract No. 2

BEGINNING at a ½" iron rod (set) for corner in the intersection of the North right-of-way of F.M. Highway No. 1995 with the northerly West line of the above mentioned 722.6614 acre tract;

THENCE North 00 deg. 28 min. 46 sec. East with the northerly West line of said 722.6614 acre tract, a distance of 133.99 ft. to a nail (found) for the Northwest corner of same, in the South right-of-way of Interstate Highway No. 20;

THENCE Easterly with the South right-of-way of said Interstate Highway No. 20, the North line of said 722.6614 acre tract, as follows: South 71 deg. 11 min. 19 sec. East -197.87 ft. to a concrete monument (found) for corner, North 63 deg. 05 min. 15 sec. East - 495.28 ft. to a concrete monument (found) for corner, South 71 deg. 07 min. 25 sec. East - 1061.20 ft. to a ½" iron (found) for the Northwest corner of the Midwest Correct Craft, Inc. 10.000 acre tract describe Volume 2680, Page 547, from which a concrete monument (found) bears South 71 eg. 0 in. sec. East - 14.89 ft.;

THENCE Southerly with the West line of said 10.000 acre tract, a ollows: S th 15 deg. 15 min. 23 sec. West - 39.65 ft. to a ½" iron rod (found) for corner, So 07 deg. 7 min. 32 sec. West - 262.80 ft. to a ½" iron rod (found) for corner, and South 24 deg. 22 sec. West - 212.65 ft. to a ½" iron rod (found) for the Southwest corner same, in the North right-of-way of said F.M. Highway No. 1995;

THENCE North 70 deg. 11 min. 00 sec. West with the N rth g of-way of said F.M. Highway No. 1995, a distance of 1598.88 ft. to the place of begin g, co ain g **15.543** acres of land.

o. 3

BEGINNING at a ½" iron r (f for th lortheast corner of a 10.000 acre tract described in a deed from Garden Valley Re Inc. t idwest Correct Craft, Inc. on April 24, 1987, recorded in Volume 2680, Page 547, in the S th right-of-way of Interstate Highway No. 20, said point being a Northwest corner of th ben ned 722.6614 acre tract;

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THENCE Southeasterly with the South right-of-way of said Interstate Highway No. 20, the easterly North line of said 722.6614 acre tract, as follows: South 71 deg. 19 min. 35 sec. East – 529.80 ft. to a concrete monument (found) for corner, South 00 deg. 00 min. 25 sec. West – 131.70 ft. to a ½" iron rod (found) for corner, South 89 deg. 07 min. 34 sec. East – 277.50 ft. to a ½" iron rod (found) for corner, South 69 deg. 11 min. 04 sec. East – 758.95 ft. to a ½" iron rod (found) for corner, and South 68 deg. 26 min. 38 sec. East – 1311.77 ft. to a ½" iron rod (found) for the Northwest corner of a 13.502 acre tract described in Volume 2527, Page 262;

THENCE South 00 deg. 30 min. 15 sec. West with the West line of said 13.502 acre tract, a distance of 1568.67 ft. to a ½" iron rod (found) for the westerly Northeast corner of a 4.617 acre tract;

THENCE Westerly with the westerly North line of said 4.617 acre tract, as follows: South 61 deg. 49 min. 40 sec. West – 81.65 ft. to a ½" iron rod (found) for corner, and South 84 deg. 54 min. 53 sec. West – 241.34 ft. to a ½" iron rod (found) for the Northwest corner of same, in the North right-of-way of F. M. Highway No. 1995;

THENCE North 30 deg. 22 min. 07 sec. West with the North right-of-way of said F. M. Highway No. 1995, a distance of 747.95 ft. to a ½" iron rod (set) for the P. C. of a curve to the left;

THENCE Northwesterly continuing with the North right-of-way of said F. M. Highway No. 1995, and with said curve to the left whose central angle is 27 deg. 47 min. [illegible] sec., radius is 1472.48 ft., tangent is 364.19 ft., chord is North 44 deg. 15 min. [illegible] W[illegible] – 707.07 ft., a distance of 714.05 ft. to a ½' iron rod (set) for the P. T. of same;

THENCE North 58 deg. 09 min. 11 sec. West continuing with the North right-of-way of said F. M. Highway No. 1995, a distance of 1654.09 ft. to a [illegible] iron rod (set) for the P. C. of a curve to the left;

THENCE Northwesterly continuing with the North right-of-way of said F. M. Highway No. 1995, and with said curve to the left whose central angle is 04 deg. 37 min. 39 sec., radius is 2904.89 ft., tangent is 117.37 ft., chord is North 60 deg. 39 min. 50 sec. West – 234.55 ft., a distance of 234.61 ft. to a ½" iron rod (found) for the Southeast corner of said 10.000 acre tract;

THENCE North 10 deg. 13 min. 31 sec. East with the East line of said 10.000 acre tract, a distance of 555.17 ft. to the place of beginning, containing **64.681 acres** of land.

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Tract No.4

BEING 18.257 acres of land situated in the Alex G. Hale Survey A-425 Smith County, Texas and being all of that called 13.502 acres described in the deed from A. A. Roberts to Garden Valley, Inc. recorded in Volume 2511, Page 509 of the Deed Records of Smith County, Texas and all of that called 4.617 acres described in the deed from Garden Valley Golf Resort, Inc. to Garden Valley Condoshare Club recorded in Volume 4869, Page 174 of the Deed Records of Smith County, Texas, and being more completely described as follows:

BEGINNING at a 1/2" steel rod found for the South corner of said 4.617 acre tract, being in the West line of a called 55 acre tract to A.T. Armstrong as recorded in Volume 117, Page 590 of the Deed Records of Smith County, Texas, and being in the North Right-of-Way line of Farm Road 1995;

THENCE Northwesterly, 401.07 feet with said Right-of-Way line and the South line of said 4.617 acre tract and with a curve to the right whose Central Angle is 20 degrees 26 minutes 50 seconds and a Radius of 1123.85 feet (Chord bears N 41 degrees 56 minutes 30 seconds West - 398.95 feet) to a 1/2" steel rod found for the point of tangency of said curve;

THENCE N 31 degrees 43 minutes 19 seconds West - 613.92 feet with the Northeast Right of Way line of said road to a 1/2" steel rod set;

THENCE N 84 degrees 18 minutes 07 seconds E - 237.34 feet to a 1/2" steel rod found for an angle point in the most Westerly North line of said 4.617 acre tract;

THENCE N 61 degrees 14 minutes 13 seconds E - 81.62 feet to a 1/2" steel rod found for the most Northerly corner of said 4.617 acre tract, and being in the West line of said 13.502 acre tract;

THENCE N 00 degrees 16 minutes 55 seconds W - 1578.[illegible] feet to a 1/2" steel rod found for the Northwest corner of said 13.502 acre tract, and being in the South Right-of-Way line of Interstate Highway No. 20;

THENCE S 68 degrees 17 minutes 30 seconds E - 92[illegible].59 feet with the North line of said 13.502 acre tract and the South Right-of-Way line of Interstate Highway No. 20 to a 1/2" steel rod found for the East corner of said 13.502 acre tract;

THENCE S 89 degrees 15 minutes [illegible] seconds W - 573.31 feet with the most Easterly South line of said 13.502 acre tract to a 1/2" steel rod found for an ell corner of said 13.502 acre tract and being the Northwest corner of said 55 acre tract;

THENCE S 00 degrees 15 minutes 51 seconds E - 1190.69 feet with the East line of said 13.502 acre tract and the West line of said 55 Acre to a 1/2" steel rod set at an bend in said East line;

THENCE S 00 degrees 15 minutes 09 seconds W - 360.00 feet to a 1/2" steel rod found at the Southeast corner of said 13.502 acre tract, the Northeast corner of said 4.617 acre tract, and being in the West line of said 55 Acre tract, a 1/2" steel rod found bearing N 89 degrees 50 minutes 46 seconds W (Bearing Basis) - 280.90 feet for witness;

THENCE S 00 degrees 01 minutes 36 seconds E - 560.62 feet with the East line of said

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4.617 acre tract to the Point of Beginning containing 18.257 acres of land.

The bearing recited herein are based on Deed Called Bearing and are rotated to fit the most Easterly North line of said 4.617 acre tract.

THE PROPERTY DESCRIBED AS TRACT NOS. 1- 4 ABOVE INCLUDES THE PROPERTY SHOWN ON THE FOLLOWING PLATS:

The Resubdivision Plat for Garden Valley Addition, Unit 1, Alex Hale Survey, A-425, Smith County, Texas containing 34.641 acres dated April 4, 2005 and recorded in Cabinet D, Slide 283-A of the Plat Records of Smith County, Texas on April 8, 2005, and Garden Valley Golf & Tennis Resort, Section I, Phase 1 as shown by plat of same recorded in Volume 6, Page 161 of the Plat Records of Smith County, Texas and Garden Valley Golf & Tennis Resort, Section II, Phase 1 as shown by plat of same recorded in Volume 6, Page 188, and as Amended in Volume 6, Page 195, of the Plat records of Smith County, Texas.

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EXHIBIT B

CLUB FACILITIES PROPERTY

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
FOR
GARDEN VALLEY ADDITION
SMITH COUNTY, TEXAS**

The Property, as described in Exhibit A of this Declaration,

SAVE and EXCEPT,

The Development, as described in Exhibit C of this Declaration.

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EXHIBIT C

LEGAL DESCRIPTION OF THE DEVELOPMENT

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
FOR
GARDEN VALLEY ADDITION
SMITH COUNTY, TEXAS

The Resubdivision Plat for Garden Valley Addition, Unit 1, Alex Hale Survey, A-425, Smith County, Texas containing 34.641 acres dated April 4, 2005 and recorded in Cabinet D, Slide 283-A of the Plat Records of Smith County, Texas on April 8, 2005 (the "Resubdivision Plat"),

PLUS,

all lots included in previous plats filed, to wit, Garden Valley Golf & Tenn[illegible]esor[illegible] Section I, Phase 1 as shown by plat of same recorded in Volume 6, Pa[illegible]61 o[illegible] Plat Records of Smith County, Texas and Garden Valley Golf & Tennis [illegible]sort, [illegible]ctio[illegible]I, Phase 1 as shown by plat of same recorded in Volume 6, Pa[illegible]8 an[illegible]s A[illegible]ended by plat recorded in Volume 6, Page 195 of the Plat Records [illegible]Smith Coun[illegible], Texas that are not within the land covered by the Resubdivision Plat.

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EXHIBIT D

ARB GUIDELINES

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESERVATIONS AND RESTRICTIONS
FOR
GARDEN VALLEY ADDITION
SMITH COUNTY, TEXAS

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EXHIBIT D

GARDEN VALLEY ASSOCIATION, INC.

ARCHITECTURAL DESIGN GUIDELINES

FOR

GARDEN VALLEY ADDITION

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GARDEN VALLEY ASSOCIATION, INC.
ARCHITECTURAL DESIGN GUIDELINES
FOR
GARDEN VALLEY ADDITION

DEFINITIONS

Terms beginning with an initial capital letter which are not otherwise defined herein will have the meaning given to such terms in the Amended and Restated Covenants, Conditions, and Restrictions for Garden Valley Addition (the **"Declaration"**)

ARTICLE I
STATEMENT OF PURPOSE, PRINCIPLES, AND POLICIES

The Declarant is desirous of an aesthetically pleasing and functionally convenient community, and has declared and recorded covenants, conditions, and restrictions applicable to improvements on Garden Valley Addition. The Declaration establishes the Association and the Architectural Review Board ("**ARB**"), and sets forth the jurisdiction, powers, and obligations, and the rules and regulations under which it will conduct its review of Proposed Improvements. The initial authority for this review was established in Article VI of the Declaration. Statements in this Exhibit are intended to amplify and clarify any relevant provisions of the Declaration. In the event of a conflict, the Declaration's provisions will prevail.

The ARB has been established to define and interpret aesthetic standards in Garden Valley Addition, and to examine, approve, or disapprove any and all proposed vertical or horizontal improvements for a Lot in Garden Valley Addition, which will be subject to approval on a case by case basis by the ARB at its sole discretion.

ARB approval must be obtained for, but not limited to, Residential Units, garages, any type of outbuilding, including, without limitation, decks, terraces, patios, courtyards, sidewalks, driveways, parking areas, signs, mailboxes, playground equipment, playhouses, swimming pools, tennis courts, greenhouses, walls, fences, exterior lighting, and any exterior changes or alterations to existing improvements, including, without limitation, colors of any exterior surface or material.

The lakes are a prominent source of beauty in the community and their integrity is of paramount importance to the ARB. In that regard, the ARB will be extremely sensitive to any activities that may affect aquatic life and general condition of the lakes. This may include strict control of the use of pesticides, chemicals, and fertilizers within Garden Valley Addition. In addition, septic tanks and cesspools are expressly forbidden. All Residential Units must be connected to the common sewer system available to Garden Valley Addition.

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The approval process is interactive. The ARB hopes to work with the Owner and architects, builders, planners, landscape architects and landscape contractors (each a "**Professional**") to insure that the final design is appropriate for each home site. Meetings will take place as needed.

ARTICLE II
STATEMENT OF OBJECTIVES

The best way to describe the philosophy of Garden Valley Addition is a commitment to quality and consistency within a pastoral neighborhood environment.

The ARB has a strong determination and desire to create a superior living environment for generations to come through the preservation of the architectural motif and character of the community.

Presented herein are design guidelines with regard to residential design and landscaping. Our intent is to present the overall design concept of the community and to give our design Professionals reasonable parameters within which they can work in a creative manner. It is our hope that these guidelines will inspire and encourage outstanding individually designed residences which, when viewed together, produce an equally outstanding and harmonious community environment.

As Garden Valley Addition is developed, we hope that each Owner takes an active interest and concern for the quality of our surroundings by designing his/her own environment with an eye for quality in design, workmanship, and materials.

Each stage of activity will be carefully monitored to assure compliance with our philosophy and this manual. We are committed to specific principles and standards to be observed by all Owners. Each detail has been carefully formulated to assure an attractive environment for all residents. Our commitment to the Owner is the reason behind these guidelines and the spirit in which all of the Professionals associated with creating this community have approached their duties and responsibilities. We encourage the Owners to embrace our commitment to excellence and the standards established herein.

ARTICLE III
DESIGN PHILOSOPHY

A premium is placed on design. To best achieve this goal, a list of approved Professionals is provided. The approved Professionals were chosen because they have shown an ability to design houses that are sensitive to East Texas, and they understand the architectural vision of Garden Valley Addition. They are all familiar with the goals of this community and the values imbedded in its planning. The ultimate value of every home will be significantly increased if all homes maintain design excellence and a responsiveness to specific local conditions.

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If an Owner wishes to work with a Professional who is not on the approved list, he/she must receive written approval by the ARB to proceed. This may be accomplished by submitting a resume and portfolio of work to the ARB, as well as a scheduled interview.

It is essential that each Professional complete a thorough analysis to gain an understanding of the Lot, the Owner's needs and these guidelines. It is also important that the Professional be able to convey to the ARB the concept and design of a proposed Residential Unit, particularly in terms of its site specificity.

All approvals by the ARB shall be in writing. No verbal approvals or representations by the ARB shall be valid or enforceable.

The ARB is made up of a combination of professionals and others who are very knowledgeable of the goals and values of this project. The ARB reserves the right to discuss and act on an application without the Owner or Professional being present. It is recommended that the Professional be the agent for the Owner when interacting with the ARB.

Because each Lot is different, a variance that is granted or a house plan that is approved shall not set a precedent. All Proposed Improvements are approved or rejected on a case-by-case basis.

A fee of $250.00 per amendment to the ARB Construction Approval (hereinafter defined) may be required by the ARB to cover administrative and recording costs. An application and fee must be submitted for each type of amendment request.

ARTICLE IV
ARCHITECTURAL REVIEW BOARD

4.1. **PURPOSE.**

To review all Proposed Improvements (hereinafter defined) to ensure that individual construction reflects the overall design objectives of the Garden Valley Addition community and that the natural setting is preserved and enhanced, and to protect and promote the value of property.

The ARB has been established for the purpose of defining aesthetic standards of construction in Garden Valley Addition, and examining and approving or disapproving any and all Proposed Improvements for a Lot within Garden Valley Addition, including, but not limited to: Residential Units, garages, outbuildings or parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playground equipment, playhouses, awnings, walls, fences, landscaping, screen doors, screen enclosures, exterior lights, sewer, drainage, disposal system, any exterior addition to or change or alteration to existing structures, including, without limitation, painting or staining of any exterior surface (jointly referred to herein as "**Proposed Improvements**").

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4.2. OBJECTIVES.

Architectural and Design Review shall be directed towards, but not limited to, attaining the following objectives for Garden Valley Addition:

4.2.1. Preventing excessive or unsightly grading, indiscriminate earth moving, clearing of property, or removal of trees and vegetation, which could cause disruption of natural water courses or scar natural land forms.

4.2.2. Ensuring that the location and configuration of the Proposed Improvements are visually harmonious with the terrain and vegetation of the Lot and with surrounding Lots and structures and that such improvements do not unnecessarily block scenic views from existing or planned structures or tend to dominate any general development or natural landscape.

4.2.3. Ensuring that the architectural design of Proposed Improvements and their materials and colors are visually harmonious with Garden Valley Addition's overall appearance and design theme of the neighborhood with surrounding development, with natural land forms and native vegetation, and with development plans, officially approved by the ARB or any governmental or public authority for the areas in which the structures are proposed to be located.

4.2.4. Ensuring the plans for landscaping provide visual pleasing settings for structures on the same Lot and on adjoining or nearby Lots, and blend harmoniously with the natural landscape.

4.2.5. Ensuring that any Proposed Improvements comply with the provisions of these covenants and the covenants, conditions, and restrictions set forth in the Declaration.

4.2.6. Promoting building design and construction techniques, which respond to energy consumption and environmental quality consideration such as, HVAC efficiency, air emissions, and run-off water quantity and quality.

4.3. SITE PLAN ANALYSIS

To initiate the review and approval process, it is required that the Owner and the Professional submit a site plan analysis and meet with the ARB. This informal meeting is intended to offer guidance and education prior to the often-expensive design process. The Owner and his Professional should discuss any questions about the guidelines or present ideas about the Proposed Improvements. A site plan analysis will be required at the informal meeting and must include the following:

4.3.1. Orientation of the proposed residence

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4.3.2. View corridors

4.3.3. Significant vegetation/tree survey

4.3.4. Drainage

4.3.5. Setbacks

4.3.6. Location of adjacent residences (if applicable)

4.4. **PRELIMINARY PLAN REVIEW.**

4.4.1. After the informal meeting, a **"Preliminary Plan Review"** (herein so called) will be conducted to ensure that the proposed design conforms with the guidelines before construction drawings are produced.

4.4.2. Six copies of each of the following (**"Preliminary Plan Review Submittals"**) shall be submitted for the Preliminary Plan Review:

4.4.2.1. Site plan on a 24" x 36" sized sheet(s) at a minimum scale of 1" = 10' or 1/8" = 1', showing all building and improvement locations, including driveway, utilities, utility trenching, all HVAC units, existing and proposed site grades, and the location of the existing adjacent sites, buildings, natural and man-made features. On larger sites that do not fit on a 24" x 36" sheet, the scale may be increased to 1" = 20' or 1/16" = 1'.

4.4.2.2. Preliminary elevations of all sides of the building are required showing roof heights from existing grade. Finished floor grade showing existing trees within twenty (20') of the building foundation should be indicated. Floor plans must be a minimum of 1/16" = 1'.

4.4.2.3. A tree survey which must include dimensions and species of all trees over six inches (6") at base in diameter, measured four and one half feet (4½') from the ground and all distinctive trees of any size. Tree cover and spread of trees must be shown as well.

4.4.2.4. A specific description of materials with samples included, if possible.

4.4.2.5. A massing model depicting the building on the site may be required. If required, the model need not be executed in full detail but should demonstrate building size, shape, roof, exterior walls, and the building's position on the site and in relation to contours in an accurate scale.

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4.4.3. If the ARB conducts a subsequent Preliminary Plan Review for any Preliminary Plan Submittals that are rejected in a prior Preliminary Plan Review, additional fees may be imposed. These fees will be at the sole discretion of the ARB.

4.4.4. Upon completion of the Preliminary Plan Review, the ARB will issue either (a) written approval to proceed with Final Plan Review (hereinafter defined), or (b) disapproval with a written explanation of what modifications will be necessary to the Preliminary Plan in order to obtain preliminary approval.

4.5. **FINAL PLAN REVIEW.**

The **"Final Plan Review"** (herein so called) shall be substantially the same as the Preliminary Plan Review. If significant changes are made between the Preliminary Plan Review and Final Plan Review, it is recommended that the Preliminary Plan Review Submittals be resubmitted. As a minimum, the submittals for the Final Plan Review shall include six (6) copies of each of the following:

4.5.1. Site Plans - scale in size appropriate to show detail, but not less than 1" = 20'-0", indicating:

4.5.1.1. access street(s) and walkways, curb cuts, drives and other exterior improvements, including materials and color;

4.5.1.2. grading and drainage plan by the Association's engineer of record

4.5.1.3. fill plan, if any (indicating run-off and tree preservation method);

4.5.1.4. foundation plan indicating finished floor elevation;

4.5.1.5. exterior lighting plan;

4.5.1.6. interior lighting and elements which may be readily visible from the outside;

4.5.1.7. service yards and air-condition/pool equipment enclosures;

4.5.1.8. entry of water, electricity, and telephone utility services to Lot;

4.5.1.9. tree survey showing location and species of trees six inches (6") or larger in diameter at a point four and one half feet (4½ ') above ground;

4.5.1.10. building plan to scale, overlaid on tree survey indicating all structures and other improvements to be included in the scheme

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with an indication of trees to remain and trees to be removed (at the same scale as boundary/tree survey;

4.5.1.11. location and identification of special features (e.g., drainage ditch, nearby lake, easements, adjacent structures, etc.);

4.5.1.12. mechanical equipment showing location and screening details; and

4.5.1.13. location of contractor's I.D. sign, dumpster, and portable outdoor toilet facilities.

4.5.1.14. Floor Plans. In a scale appropriate to show all details including an exact computation of the square footage stated by floor in the case of multi-floored residences and finished floor elevations.

4.5.2. Roof Plans. In size appropriate to show detail.

4.5.3. Foundation Plans. In size appropriate to show detail.

4.5.4. Elevations. Depicting all four (4) sides, including hidden

4.5.4.1. existing and finished grade;

4.5.4.2. total height dimensions; and

4.5.4.3. exterior treatment to inclu all materials with samples, if possible, door and window fenestrations, walls, fences, A/C enclosures, and pool equipment enclosures.

4.5.4.4. Typical Wall and Build Sections. Depicting:

(1) Materials with samples, if possible;
(2) roof pitch; an
(3) exteri wall

4.5.4.5. Details Depicting:

(1) sign features and other improvements requiring clarifications;
(2) cia and trim details;
(3) doors and windows;
(4) garage doors; and
(5) driveways and sidewalks.

4.5.4.6. Patios, Decks, Balconies, Verandas, Porches, Pools, Enclosures, Etc.

4.5.4.7. Exterior Lighting. Details with product photos.

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4.5.5. Landscape Plan. At a scale of site plan, preferably signed and sealed by a registered Texas landscape architect, including:

4.5.5.1. Boundary. Indicate all perimeter property lines, setbacks, dedicated easements, and north arrow.

4.5.5.2. Structures. Position all structures on the property and indicate the location of all windows, doors, and permanent construction elements, which are proposed.

4.5.5.3. Perimeter Areas. Reflect all adjacent site conditions (i.e., driveways, neighboring landscape beds, and trees) and surrounding roadways, lake, and pertinent features, which may affect the subject property.

4.5.5.4. Hardscape. Indicate all proposed vehicular and pedestrian circulation treatments, swimming pool location and configuration, miscellaneous amenity elements, garden features, and permanent site furnishings, which may affect the use of the site.

4.5.5.5. Utility Elements. Show all air conditioner equipment locations, irrigation controller/clock, exposed utility meters, garbage areas, gas tank and/or valves, pool equipment, and trash service or utility elements with opaque screen of wall and landscape buffers.

4.5.5.6. Decorative Grading. Indicate general existing grades and all proposed decorative grading (earth berming) at one-foot (1') intervals.

4.5.5.7. Existing Vegetation. All trees to be removed must be noted.

4.5.5.8. Proposed Vegetation. Provide a comprehensive landscape layout for all trees, shrubs, ground covers, vines, and sod, which are proposed throughout the site.

4.5.5.9. Plant List. Identify all proposed vegetation with a plant list that reflect the scientific and accepted common name, quantity, spacing, height, spread, caliper, or size at time of installation as well as any necessary remarks which may be required to clearly portray the technical needs for design review and/or final installation purposes.

4.5.5.10. Irrigation. Submit a detailed plan for ARB review. Such plan must provide for a rain sensor and be designed to minimize runoff.

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4.6. **FINAL STAKEOUT.**

Concurrent with final submission, the Owner or contractor will provide a string stakeout of the Lot lines and building lines for review by the ARB on the Lot. All trees to be removed must be clearly marked with red surveyor's tape.

4.7. **ARB APPROVAL AND PERMITS.**

Upon approval by the ARB of the Final Plans and the Final Stakeout ("**ARB Construction Approval**"), the Owner may then apply to the county or other agencies for a building permit, if applicable. The ARB Construction Approval and any applicable Permits must be posted on the back of the approved builder's sign prior to construction commencement.

4.8. **CONSTRUCTION COMMENCEMENT**

Upon receipt of the ARB Construction Approval and required posting, the Owner will be authorized by the ARB to commence construction. The ARB reserves the right to inspect in the field for compliance during any stage of construction. ARB Construction Approval is effective for one (1) year from the date of issuance. If construction of the Proposed Improvements for which ARB Construction Approval was granted is not commenced within one (1) year from the date of issuance, Owner must re-submit Preliminary and Final Plans for ARB Construction Approval.

4.9. **COMPLIANCE DEPOSIT**.

The Compliance Deposit referred to in **Schedule 1** attached provides the ARB funds to remedy non-compliance by the Owner or Professional. The ARB shall deduct funds from the Compliance Deposit as described in Section 8.1.21.

4.10. **FINAL APPROVAL CERTIFICATE**

Upon completion of construction, Owner or Professional will notify the ARB that the Unit is ready for final inspection. The ARB will conduct such inspection, and if all improvements have been satisfactorily completed, including landscaping, in accordance with the ARB Construction Approval, the ARB will issue a **"Final Approval Certificate"** and refund any unused or unapplied portions of the Compliance Deposit.

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4.11. **FINAL OCCUPANCY**

No Unit within Garden Valley Addition may be occupied by any person until a Final Approval Certificate is issued by the ARB.

ARTICLE V
LANDSCAPING STANDARDS

5.1. **INTRODUCTION.**

The goal of the ARB is to provide for the sensitive enhancement of the environment by the encouragement of an on-going planting program, which adheres to a "natural theme." Material selections and planting arrangements, which reinforce lush naturalistic settings in keeping with the character of the region, will be expected and the repetition of native plant species will, in general, be considered preferable. The ARB strongly encourages the use of trees or plants that will bloom at various times of the year.

5.2. **SUBMISSION REQUIREMENTS.** To ensure that the unique elements ... create the visual appeal of the community are preserved and enha...ced ...d that any proposed vegetative improvements are kept consistent for t... benef... of all, a Landscape Plan as provided in Section 4.5.1.10 will be req...ired fo... ...roposed Improvements. The ARB reserves the right to approve o... disap...ove... ...y such submission, and may at its sole discretion make ...gest...s or r...quire modifications which may be appropriate to b...g the propos... landscape plan into compliance with these guidelines.

5.3. **TREE POLICY.**

In recognition of the numerous indi...ous plant communities, which occur throughout Garden Valley Addi...on, the ...RB requires that any tree with (a) a diameter greater than six ...ches (6") (m...sured four and one half feet [4½'] above the existing grade) or (b) a...rtain ...pe...es of trees designated by the ARB of any size be removed by permissi... only. All trees proposed for removal shall be tagged with red surve...or's tape. No trees of any size shall be removed without approval of th... ARB. The ...RB reserves the right to require the replacement of any trees t...t are ...ppro... for removal. Tree replacements shall be similar in species, ...d ...bit o... growth to the original and shall be generally provided in sufficie... quan...es to fully replace the total inches of caliper (tree diameter) lost to clearing. The Preliminary Plan Review Submittals must include the tree survey.

5.4. **D...SIGN REQUIREMENTS.**

5.4.1. The general landscape design theme for Garden Valley Addition is intended to be natural and informal, using sufficient plant material to present an established appearance at time of installation.

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5.4.2. Areas of undisturbed tree growth should generally be preserved and efforts to incorporate such areas into the landscape design of each home site will be considered desirable. Such areas shall be cleaned, trimmed, and mulched as may be necessary to produce an integrated appearance throughout the design. Insofar as possible, small trees should be left in these areas. Tree wells and other applicable forms should be considered to preserve some areas.

5.4.3. Plants should generally be massed in clusters and seemingly random patterns, rather than in overly organized linear configurations.

5.4.4. Placement of primary trees should be situated in such a manner so as to complement rather than decorate the residence.

5.4.5. Care should be taken to introduce plant material to interrupt long, horizontal building elements and to modulate overbearing vertical surfaces.

5.4.6. Common property lines of adjoining residential sites should be planted in such a manner as to be advantageous to each party. In keeping with the preceding, masses of screen plantings will be desirable over uninterrupted hedges and vertical modulation of mutual benefit will be encouraged.

5.4.7. Submitted landscape plans should address existing (if any) landscape treatments to common property lines. To avoid arbitrary termination of plant material at property lines, every effort shall be made to align existing (on adjacent Lot[s]) plant beds with proposed plant beds.

5.4.8. While planting organization will be expected, overly contrived garden configuration, topiary forms, and vegetation clipped into unnatural shapes will be discouraged. Small formal gardens may be allowed if contained in a private area not visible from the street.

5.4.9. Wherever possible, flowering trees, shrubs, perennials, ground covers, and blossoming vines should be introduced into the landscape plan for each residential installation.

5.5. **PLANTING REQUIREMENTS.**

5.5.1. Primary Canopy Trees and Pines.

5.5.1.1. The combined canopies of existing and proposed primary canopy trees shall, at maturity, provide a minimum total coverage of at least fifty percent (50%) of all open site areas (exclusive of building coverage and related impervious surfaces). The ARB may grant an exception to this guideline for the "Large Meadow Lots". All trees of this type shall have a minimum height of ten feet (10')

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and a minimum spread of four feet (4') at time of installation. There will be a minimum of four (4) canopy trees required for each home site. The ARB may grant an exception to this requirement for the small town center lots.

5.5.1.2. To produce a more cohesive appearance and unified landscape design character throughout the community, no more than three (3) varieties of a primary canopy tree species will be permitted on any single home site.

5.5.1.3. In general, primary canopy trees shall be provided for both the front and rear elevations of each residence, in accordance with the minimum landscape requirements.

5.5.1.4. Much of Garden Valley Addition's forest cover consists of stands of various native pine and oak trees. The continued use of pines and oaks is encouraged. The use of fast growing weak wooded trees is discouraged. Existing trees can count toward minimum requirements.

5.5.2. Flowering Trees and Accent Trees. Flowering trees and accent trees will be encouraged throughout the community and shall be incorporated in such a manner as to provide visual interest and design reinforcement in the landscape beds throughout the home site. Choice of colors should be kept compatible with the remainder of the installation.

5.5.3. Flowering Shrubs/Ornamental Grasses. Flowering shrubs will generally be used as an enhancement to adjacent architectural elements or for reinforcement throughout the home site to ensure visual interest. The use of shrubs and ornamental grasses that are natural in appearance is encouraged. Such shrubs shall be maintained in such a manner as to promote maximum blooming. To create an initial established appearance, the plants shall be no smaller than three (3) gallons in size. Unduly long or uninterrupted linear flowering shrub masses installed in a formal fashion will generally not be allowed. A more natural hedging application, installed in a meandering alignment, will be considered desirable.

5.5.4. Evergreen Hedges. Evergreen hedges will generally be used as a design reinforcement to the architectural character of the residence or as may be required for visual screening or buffering purposes. Such hedges shall be no smaller than three (3) gallon-sized plants. The plants shall be full to base to create an established appearance. The use of double staggered rows of hedge plants rather than a single row is encouraged where space permits.

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5.5.5. Exposed Equipment. All exposed mechanical equipment (air conditioning units, swimming pool and spa equipment, etc.) shall be completely screened with a solid evergreen hedge and wall consistent with the architectural plan of the home. Care shall be exercised in the placement of such hedges to avoid conflict with neighboring unit vistas and ventilation, while maintaining visual separation of undesirable elements.

5.5.6. Shrubs and Ground Covers. Foundation shrubs and ground cover beds will be provided in conjunction with the remainder of the landscape installation to reinforce a more unified design character for each home site. Although simplicity of planting design is expected, proper attention to the contrasts of adjoining species (in terms of color, texture, and habit of growth) is encouraged. In general, larger quantities of a limited palette of shrubs will be considered more desirable than a wide mixture of limited quantities of varying materials. These shrubs shall be planted close together, according to their variety, to form a continuous mass rather than isolated solitary plantings.

5.5.7. Sod and Lawn. Unless ARB approval is obtained, all sod throughout the residential portions of Garden Valley Addition will be St. Augustine or Centipede. Sod should be installed solid in front yards. Hydromulch with Centipede mix will be allowed in back yards only.

5.5.8. Lake Banks. In order to stabilize lake banks and minimize Lake sedimentation, all Lots that border on Lake must have grass sod installed from the normal water elevation back to a line three feet (3') beyond the top of the Lake bank. The species of grass sod used should be consistent for all Lots bordering any lake and shall be as established by the ARB. No Lake banks may be otherwise planted or mulched without specific approval by the ARB. Any such measure must guarantee the integrity and stability of the Lake bank. Also, no aquatic plantings within the littoral (shallow water) zone will be allowed without specified ARB approval. In all cases, the Lot Owner is required to provide sufficient water and maintenance to ensure optimum plant health and a neat, well-kept appearance.

5.6. **LANDSCAPING SPECIFICATIONS.**

5.6.1. Minimum Planting Specifications.

5.6.1.1. All existing trees shall be protected from damage during the construction period by the erection of a suitable fence enclosure located no closer than five feet (5') from the affected vegetation.

5.6.1.2. Soil amendments and fertilizer applications at installation should conform with current practices and standards endorsed by the

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American Association of Nurserymen and with Section 9.5.6 of the Declaration.

5.6.1.3. All planting beds, tree rings, and shrub groupings shall be installed and maintained with a minimum layer of two inches (2") of clean, fresh pine straw or bark mulch. Yard trimmings and commercial clipping residue will not be acceptable for use as plant mulch.

5.6.1.4. All newly installed trees shall be staked only as necessary to insure stability during the initial established period for the landscape installation.

5.6.2. Minimum Irrigation Specifications. All residential landscaped areas shall have installed a fully automatic irrigation system capable of one hundred percent (100%) coverage throughout each home site. All irrigation heads will be of such variety and installed in such a manner as to be generally out of sight. All exposed time clocks, switch gear, and equipment shall be appropriately screened from view. All irrigation systems will have a rain sensor. All irrigation systems will employ drip irrigation in beds, and will be designed to avoid overspray on driveways, sidewalks and roads.

ARTICLE VI
CONTRACTOR STANDARDS

The following shall apply to any and all construction, improvement, alteration or maintenance of any structure; to any change to the exterior of any structure; and to grading, excavating, tree removal, landscaping or any other change to the grounds of a Lot within Garden Valley Addition. In the event a violation of these criteria and guidelines takes place, the construction or work being performed shall cease until conformance is achieved. Infractions of the construction rules may be cause for fines per infraction in accordance with Section 8.1.21 and/or suspension of a contractor or subcontractor from the community.

6.1. BUILDING CONTRACTORS.

All builders and general contractors must be pre-approved prior to commencement of new construction or major renovation of any residence within Garden Valley Addition.

6.2. START OF CONSTRUCTION.

No Lot clearing or placement of portable toilets will be permitted until the ARB Construction Approval and any applicable governmental permits are obtained and posted on site.

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6.3. **PORTABLE TOILETS.**

Prior to commencing work, a portable toilet must be placed on the job site and in a manner so as to least disturb other residences and other construction.

6.4. **CONSTRUCTION TRAFFIC.**

All construction traffic shall access the community through the designated construction entrance. For security purposes, all contractors may be required to register with the Association a complete list of their sub-contractors and other employees who are permitted entry into the community. All vehicles shall be parallel parked on one side of private streets and shall not be parked on any other Lots whether vacant, under construction, or completed. There will be no washing of any trucks on the streets.

6.5. **CONSTRUCTION HOURS.**

Construction will be permitted Monday through Friday from 7:00 a.m. to 7:00 p.m. and from 9:00 a.m. to 5:00 p.m. on Saturday. Absolutely no construction will be allowed on Sundays, including interior work. No construction will be permitted on New Years Day, Easter, Independence Day, Thanksgiving or Christmas.

6.6. **STREET AND SITE CLEAN UP.**

All construction sites must be maintained in a neat and orderly fashion at all times. Inspection may be made at any time for verifying compliance. Lots must be cleaned of construction waste on a regular basis or when waste is visible from the street. The builder is responsible for trash that blows off the site and shall retrieve such trash immediately. No trash shall be stockpiled on the Lot. There will be no stockpiling or dumping on adjacent Lots or on streets. Remaining trash will be removed by the Association and billed to the responsible contractor or sub-contractor. Contractors shall use only the utilities provided on the site on which they are working. The ARB reserves the right to require fabric trash barriers. The street and curb shall be kept clean at all times and kept free of debris and dirt.

6.7. **CLEARING.**

Only plants, vegetation, and trees directly within the planned structure, roof overhang, or driveway shall be removed. Any plants, vegetation, or trees uprooted or cut down on the job site shall be removed from the job site and from the community as soon as is practical but not later than five (5) working days.

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6.8. **CONSTRUCTION DAMAGE.**

Any damage to streets and curbs, drainage inlets, sidewalks, street lights, street markers, mailboxes, walls, etc., will be repaired by the Association and such costs billed to the responsible contractor or taken from the compliance deposit.

6.9. **CONSTRUCTION SPILLAGE.**

Operators of vehicles are required to see that they do no spill any damaging materials while within the community. If spillage of a load occurs, operators are responsible for cleaning it up. Clean-ups done by the Association will be billed to the contractor responsible for ordering the delivery. Please report any spills as soon as possible. Washout of concrete trucks or cleaning of any equipment must be contained on the Lot.

6.10. **TELEPHONE/CABLE TV LINES.**

If any telephone, cable television, electrical, water, irrigation water, etc., lines are cut, it is the contractor's responsibility to report the accident to the G[illegible]in thirty (30) minutes.

6.11. **DRESS.**

All construction workers will be required to wear clothing compatible with their specific job requirements. Shirts will be worn at all times.

6.12. **CONSTRUCTION SITE APPEARANCE.**

All personnel working in the community are to keep all of their areas free of discarded materials such a lunch bags and odd materials at all times. Objects should not be thrown out of cars and trucks. No storage of materials for other construction sites will be permitted on any Lot.

6.13. **NOISE LEVELS.**

Loud radios or noise will not be allowed within the community. Normal radio levels are acceptable; however, speakers mounted on vehicles or outside of homes under construction are not permitted.

6.14. **VEHICLES AND EQUIPMENT.**

No vehicles (trucks, vans, cars, etc.) may be left in the community overnight. Construction equipment may be left on the site while needed, but must not be kept on the street, unless prior permission has been granted. Job site office trailers are allowable during construction providing they are clean and in good repair and condition.

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6.15. **PERSONNEL.**

Only bona fide workers are allowed on the property and are required to exit the property upon completion of their work. Spouses may drive workers to and from the site, but must not remain on the property unless they are actual employees of the sub-contractor. For safety reasons, children will not be permitted on the job site. No alcoholic beverages are permitted on or near the job site. Contractor personnel will not be permitted to bring pets on the property.

6.16. **SIGNAGE.**

6.16.1. During construction, one (1) approved standardized construction sign shall be allowed within the front setback of the Lot to assist subcontractors and others locate the particular Lot within the community. Such sign may be erected at commencement of construction and removed at completion of construction.

6.16.2. During construction, one (1) approved standardized permit board will be erected within the front setback of the Lot to accommodate any building permits and/or approvals which may be issued. This will precede the ARB Construction Approval. Unless otherwise approved, the permit board shall utilize the backside of the construction sign.

6.16.3. NO OTHER SIGNS, BOARDS, FLAGS, BANNERS, ETC., SHALL BE PERMITTED WITHOUT ARB APPROVAL.

This shall include, but not be limited to, temporary identification signs announcing new development, signs advertising, offering, or soliciting "for sale" or "open house" by any agency, the Owner, or builder. This shall include any signs placed on the interior of a structure that are visible in any manner from the exterior. The ARB may require certain customized signage based on criteria to be established by the ARB. An exception may be granted for a staffed open house during daylight hours. One sign maximum shall be allowed for each Lot staffed.

6.16.4. No award or directional signs shall be placed, posted, or erected anywhere within the confines of the entire Garden Valley Addition without prior review and approval of the ARB.

6.16.5. No signs, flags, or banners either on a permanent or temporary basis shall be placed, posted, or erected, which advertises, offers, or solicits business of a retail or commercial nature, without the prior review and approval of the ARB.

6.16.6. Permanent identification and directional signage whether identifying an individual development, community, village street name, or location are subject to review and approval of the ARB.

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6.16.7. The ARB shall have the absolute authority to remove and retain without notice, any and all signage that is prohibited, non-conforming to standard specifications, or not having the prior review and approval of the ARB.

ARTICLE VII
GARDEN VALLEY BUILDER QUALIFICATIONS

The ARB insists that the quality of the construction of our homes is in keeping with our standards for excellence in design. Architectural designs are simply plans; execution of those plans require experience. It is for these reasons that we require an application, and have set the following criteria for approval of Builders.

7.1. **EXPERIENCE.**

The Builder must have experience in building custom, single-family homes.

7.2. **REFERENCES.**

The Builder must provide pictures of, along with the names, addresses, and telephone numbers for, all homes built during the last three (3) years and a recommendation from at least three (3) of the persons for whom the Builder has constructed a home during that period.

7.3. **SUBCONTRACTORS AND SUPPLIERS.**

The Builder must provide a complete list of subcontractors and suppliers for the past three (3) years.

7.4. **FINANCIAL ABILITY.**

The Builder must supply a letter from a lender that establishes his financial ability to construct a custom home and his financial stability over the last three (3) years.

7.5. **INSURANCE.**

The Builder must provide a certificate of insurance of limits no less than Three Hundred Thousand Dollars ($300,000) per occurrence with Five Hundred Thousand Dollars ($500,000) aggregate for liability and casualty coverage.

7.6. **FINANCIAL STATEMENT.**

The Builder agrees to supply the Board with a current financial statement or other information acceptable to the Board to verify Builder's financial condition, upon request.

The above criteria have been established for the protection of the community as a whole. We do not wish to stifle competition; in fact, we encourage it. However, a

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Builder's reputation is only earned through experience, customer satisfaction, and efficient management.

ARTICLE VIII
BUILDING GUIDELINES AND ARCHITECTURAL STANDARDS

8.1. GENERAL.

8.1.1. Accessory Structures.

Many Lots are large enough to accommodate a gazebo, cabana, detached garage, guesthouses and other structures. If built, the accessory structures must be located within the required setbacks and match the architectural details of the home. Roofs and exterior walls must be compatible with the main house in both design and color.

8.1.2. Buildings/Accessory Structures Setbacks.

The building setbacks regarding the placement of buildings, garages, decks, patios, walls, and hedges will be at the discretion of the ARB, depending on the Lot's location. Some Lots may have required variations due to special factors. The ARB will establish setbacks on these Lots in consultation with the Owner and architect during the initial review stage.

8.1.3. Easements.

No permanent structures shall be placed in any easement.

8.1.4. Maximum Building Coverage.

A maximum of forty percent (40%) of the Lot can be covered by the building, except on smaller Lots where it would otherwise be impractical. This will be at the discretion of the ARB. The building shall mean areas contained under the roof, including air-conditioned or non-air conditioned space under roof, including breezeways and garages.

8.1.5. Square Footage.

All Residential Units shall have minimum square footage as adopted from time to time by the ARB.

8.1.6. Finished Floor Elevations/Foundations.

Ideally, the minimum finished floor (first floor) shall be eighteen inches (18") above the crown of the adjacent roadway and a minimum of eighteen inches (18") above grade; however allowance may be made for Lots that fall below curb grade. The maximum first floor finished floor elevation of

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residences shall be forty-eight inches (48") above the crown of the road. While slab on grade is prohibited visually, it may be accomplished through the use of stem walls with backfilling. Exposed foundations shall be finished in the same material as the exterior finish of the home.

In the event a wood floor or crawl space is provided, the ventilation openings are to be covered with grating, painted to conform with the trim or color scheme of the homes. Standard aluminum vent grills are not permitted. Any concrete-block foundation walls are to be clad or stuccoed. Wooden pilings used for foundation support shall be encased in finish, trim, as exposed round piling is not appropriate. Careful attention should be given to all foundations to provide for the same degree of detailing found in the main body of the house.

See the attached Conceptual 7 for illustrations and ideas regarding the desired effect sought by the ARB.

8.1.7. Exterior Appearances.

8.1.7.1. Walls: The exterior materials throughout the neighborhoods will be primarily stone, fiber cement, or log, with limited use of wood and stucco on architectural features. Colors shall be a subtle range of earth tones with primary colors in trim, creating individuality between houses and a sense of community harmony. The exterior of each Unit must be at least 20% stone.

Minimum floor-to-ceiling height of the primary living area space on the first floor shall be ten feet (10'). The minimum height on the second floor shall be nine feet (9'). However, such requirement does not apply to the sloped ceilings working within the roofline.

See the attached Conceptual 7 for illustration of the effect desired.

8.1.7.2. Windows: Wood or vinyl frame windows are strongly suggested, as is the use of double patio door units in combination with windows. They should be carefully proportioned to enhance the exterior appearance and interior light quality.

Scale proportion and alignment (horizontal and vertical) are critical elements of design. Transom windows are encouraged.

Lightly tinted glass is acceptable, but foil or reflective material is not allowed. Drapery liners of a neutral color are required to provide a consistent exterior appearance. Roof overhangs, awnings, and shutters are appropriate sun screening devices with ARB approval of design, material, and colors.

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See the attached Conceptuals 5 and 9 for illustration.

8.1.7.3. Roofs, Materials, and Appurtenances:

(1) The roofs of all Residential Units within the community shall be galvanized standing seam (no corrugated metal panels) metal and shall have a similarity of form to provide for a homogeneous character, with all gable and hip roofs having a minimum roof slope of 10/12. Roofs on porches, dormers, or other architectural features may be flat or have a roof slope as low as 2/12, subject to ARB approval. See the attached Conceptuals 1, 2, and 3 for illustrations and ideas.

(2) Roofing less than 10/12 slope is acceptable only in minor areas (not to exceed 15% of roofing area) with primary acceptability in use as a connection to more dominant themes of the roofing mass. All connecting roofs, i.e., garage to main structure or freestanding garage, etc., shall have a roof with material compatible with the main structure. Roof vents and other penetrations shall be as unobtrusive as possible and match roof panels.

(3) Roof overhangs form an integral part of the architectural character of the community and should be maximized wherever possible to provide shelter from both the sun and rain showers. In many cases roof overhangs may incorporate balconies, decks, and screened porches. The contemporary "shed" design is not appropriate. Roof overhangs shall be a minimum of twelve inches (12") and a maximum of twenty-four inches (24").

(4) Eaves shall be designed in scale with the residence and its vertical scale. Fascia shall be three (3)-piece minimum and at least eight inches (8") wide. Applied brackets are encouraged.

(5) Roof appurtenances, whether ornamental or functional, such as ornamental ridge caps, weather vanes, oversized fireplace flues, etc., are not only permissible, but encouraged to give an additional scale of detail to the Residential Units.

(6) All roof accessories, such as vent stacks and roof vents, shall be as unobtrusive as possible and be either painted to match the roof, or accentuated to form a statement. Wherever possible, vents shall be located away from the entry elevations. Flashing should be raw aluminum or galvanized flashing to match roof.

(7) The use of solar energy producing devices (active and/or passive) and small cable TV dishes (18" or smaller) are

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subject to the ARB approval, but in all cases must be removed from view from the street or adjacent properties unless approved by the ARB.

8.1.7.4. Chimneys: Chimneys, along with other projects above roofing surfaces, play a dominant role in depicting the character desired. Chimney dimensions shall be compatible in scale to the structure. All exposed surfaces of chimneys should be of stone with a preference for covered flue endings. See the attached Conceptual 6 for illustrations and ideas.

8.1.7.5. Doors: Front doors should make a strong architectural statement. Wood or glass exterior doors are strongly recommended to exceed a height of seven feet (7'). The use of double front entry doors or doors enhanced by side and/or top window panels are strongly encouraged. Sliding patio doors are discouraged and in no case shall be utilized where they are visible from the street or used as a front entrance.

Garage doors should be compatible with the exterior wall design and color. Garage doors must incorporate automatic garage door openers. Garages must be rear loading or side loading; however, side-loading garages on corner Lots will require specific approval of the ARB. See the attached Conceptual 4 for illustration and ideas of the desired effect.

8.1.8. Driveways.

8.1.8.1. Driveway width should be a maximum of twelve feet (12'), except in the vehicular parking area or as the drive enters the garage enclosure. Driveway entry from the street must generally be located at least five feet (5') from the side property lines and, where possible, should gracefully curve to the garage entrance rather than overly straight and structured driveways and located to avoid existing trees. The Board on an individual basis will review access to garages.

8.1.8.2. The maximum driveway width at the intersection of the curb shall not exceed twenty feet (20') and should have a curved or geometric pattern intersecting with the driveway. This cleared area shall be part of the submission for committee approval as part of the hardscape drawings on the landscape site plan.

8.1.8.3. Recommended surfaces are stone or concrete (either stamped or with patterns). Each driveway design, pattern, and coloring shall be noted on the site plan for hardscape of the landscape design

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drawings. Epoxied surfaces and asphalt driveways are not permitted.

8.1.9. Garages.

8.1.9.1. Garages may be detached from the main residence, but must fall into the building envelope unless otherwise approved.

8.1.9.2. Carports are not permitted; however, porte-cocheres are permitted with the restriction of no underneath permanent parking. Garage doors facing the street will not be permitted, with the exception of smaller Lots or corner Lots (which may face a secondary street).Garage doors and cart storage doors shall be offset a minimum of twenty-four inches (24") to break the massing of the doors. It is preferred that all garage doors be recessed a minimum of twelve inches (12")

8.1.9.3. See the attached Conceptual 4 for illustration of desired effect.

8.1.10. Sidewalks. On certain portions of the Property, Owners may be required to construct a poured concrete sidewalk a minimum of four feet (4') in width. Sidewalks shall be installed at the time of installation of driveways with optional approved curb cuts across the front of the Lot. On other portions of the Property, Owners may be required to construct a walking trail consistent with the adjacent walking trail.

8.1.11. Walls/Fences. All fences shall be approved by the ARB. Privacy fences are expressly prohibited. A fenced dog run next to a residence made of wrought iron or stone may be considered. Wrought iron fences around pools will be allowed, subject to ARB approval.

8.1.12. Pools/Pool Cabanas/Pool Enclosures.

(1) Pools must be located in the side or rear of the residence, and must conform to any setback requirements promulgated by the ARB.

(2) Pools must be designed to complement the architectural components of the residence. Pools must be in-ground. Pool coping may not be higher than one foot (1') below the finished first floor elevation of the residence.

(3) Pool cabanas will be permitted if compatible with the architectural elements of the residence, including roof, and must be situated within the pool setbacks established. The cabana may not be a Residential Unit, and only a minimal Pullman type kitchen will be allowed. In essence, a "weekend guest cottage" is the only use permitted.

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8.1.13. Greenhouses. Detached greenhouses will be reviewed on case by case basis. The ARB will take into account the impact of the structure on neighboring residences and views.

8.1.14. Porches, Decks and Balconies.

(1) The creative use of wide porches on the front, sides, or rear of the residences is strongly encouraged.

(2) Handrails and/or columns form an integral part of the porch concept. The handrails and columns should be either stone, wood, or wrought iron (with proper rust inhibitor), and designed to be architecturally compatible with the residence. Columns and handrails must be relatively simple, properly proportioned to the scale and mass of the house, and be understated rather than be overly ornate or fussy.

(3) Balconies are encouraged to provide second floor privacy areas and to add a lake view as appropriate.

(4) See the attached Conceptuals 1 and 7 for illustrations and ideas.

(5) Porch or deck enclosures may not be free standing. If screening is desired, the enclosure must be designed as an integral part of the roof and walls and not appear as an added appendage.

8.1.15. Mailboxes. Mailboxes shall be of a standard design selected by the ARB.

8.1.16. House Numbers and Names. The entire community has a pre-designated house/street number system. Residential Units will be required to use an approved address post and mailbox.

8.1.17. Exterior Lighting.

(1) Exterior lighting must be provided for safety and security. Recessed or down lighting and vertical landscape lighting are recommended in lieu of floodlights.

(2) No lighting should be located as to interfere with vehicular traffic or become a nuisance to neighbors by adversely affecting the nighttime environment of adjacent properties. The ARB will approve all post-mounted and building-mounted fixtures that are visible from other properties.

8.1.18. Colors.

(1) The intent of the color palette for Garden Valley Addition is to blend the intense colors of nature, including sky,

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flowers, trees, and lake into muted subtle shades. The number of colors utilized should be kept to a minimum.

(2) The ARB in reviewing the colors will take into account the combination and intensity of colors selected, their appropriate use, and the palette of surrounding residences.

8.1.19. Inspections.

(1) A representative of the ARB may make an inspection of the site prior to the commencement of any tree clearing or construction to ensure that all erosion controls such as the perimeter and silt fencing and construction entry is installed. The portable toilet must be on-site in order to proceed with construction.

(2) During the construction phase, the ARB or representative may perform periodic inspections to ensure compliance with erosion controls and the ARB Construction Approval; however, the ARB will not assume any liability with regard to local building codes or other governmental laws or requirements.

(3) A final inspection will be done at the completion of landscape installation to ensure compliance with the approved plans.

8.1.20. Foundation Survey. A foundation survey may be required for house construction. The survey shall be prepared and sealed by a Registered Land Surveyor. The survey must be submitted for written approval by the ARB prior to the framing of the house.

8.1.21. Fines. The ARB will perform periodic inspections during construction to ensure that the home is built in accordance ARB Construction Approval, as well as to identify non-complying construction activities. If items identified as non-complying with the regulations or not remedied by the close of the second business day after the notification of the violation has been delivered, fines will be levied and shall be paid within ten (10) days from the date of such levy. Fines may also be deducted from the $5,000 Compliance Deposit at the ARB's discretion, in which case the Owner will, after written notice of the amount applied, pay the applied amount to restore the Compliance Deposit to $5,000. In the event that fines exceed $1,000, and/or fines remain unpaid by the Professional or Owner, the ARB reserves the right to file a lien against the subject property or pursue any other remedy the ARB or the Association may have at law or in equity. Upon completion of the home as per the ARB Construction Approval, (including landscape installation), a final inspection will be performed by the ARB. Provided that no damage to the Common Areas, curb, streets, or adjacent properties remains unrepaired and the Unit has been built

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according to the ARB Construction Approval, the Compliance Deposit or any balance thereof will be returned to the Owner.

8.1.22. Changes. During construction, no changes in the exterior plans, materials, or colors previously approved by the ARB may be undertaken without prior written approval from the ARB. Once the residence is completed, no exterior alteration, including, but not limited to, colors, materials, additions, or deletions shall be undertaken that will result in changes, visible or apparent, to the exterior appearance without prior written approval from the ARB.

8.1.23. Modifications and Enforcement. The ARB may at any time, in its sole discretion, amend these guidelines. As the ARB reviews plans, it is inevitable that unforeseen situations will require amendment to these guidelines. Every effort will be made to notify Owners of these changes; however, it is ultimately the Owner's responsibility to obtain the latest guidelines.

The ARB shall have the right to enforce all terms and provisions of these guidelines. The rights of enforcement are more specifically spelled out in the Declaration.

8.1.24. Construction Timetable. After ARB Construction Approval, construction operations in accordance with the ARB guidelines enumerated herein and all applicable governmental ordinances, are required to begin within not more than twenty-four (24) months from the date a Lot is transferred to Owner by Declarant. If construction does not so begin, the Declarant may exercise its right retained in the Declaration to repurchase said Lot at eighty percent (80%) of the original purchase price.

8.2. **BASIS FOR DECISION.**

Approval shall be granted or denied by the ARB based upon the standards and guidelines promulgated by the ARB from time to time, including:

8.2.1. compliance with the provisions of these Architectural Design Guidelines;

8.2.2. the quality of workmanship and materials;

8.2.3. harmony of external design with the surroundings;

8.2.4. effect of the construction on the appearance from surrounding property; and

8.2.5. such other factors, including purely aesthetic considerations, which in the sole opinion of the ARB, shall affect the desirability or suitability of the construction.

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