

WARRANTY DEED

THE STATE OF TEXAS

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COUNTY OF SMITH

KNOW ALL MEN BY THESE PRESENTS:

THAT GRANDE JOINT VENTURE, a Texas Joint Venture ("Grantor"), for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration, the receipt of which is hereby acknowledged, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL AND CONVEY unto NORTHSTAR REALTY, LTD., a Texas Limited Partnership, of the County of Smith and State of Texas ("Grantee"), the following described real property in Smith County, Texas, to-wit:

All that certain tract or parcel of land, being a 0.949 acre tract in the Marshall University Survey, Abstract 624, Tyler, Smith County, Texas, and being more completely described in Exhibit "A" attached hereto and made a part hereof for all purposes.

This conveyance is made and accepted subject to any and all easements, rights-of-way, restrictive covenants and conditions, and mineral reservations and/or conveyances, if any, as may be filed of record with the County Clerk of Smith County, Texas, and affecting the property herein described, and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, to the extent the same are in effect and relating to the hereinabove described property.

IT IS AGREED AND UNDERSTOOD that the property conveyed herein shall be restricted in its use for the construction and maintenance of a street and the installation and maintenance of utilities, with said street to be constructed in accordance with City of Tyler specifications.

AND THERE IS HEREBY RESERVED unto Grantor, Grantor's successors and assigns, out of the property herein conveyed, the full and uninterrupted right and liberty at all times hereafter, in common with Grantee and Grantee's successors and assigns, a 15 foot wide right-of-way and easement for utility services across the North end of the property herein conveyed.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Current ad valorem taxes on the above described property having been prorated, the payment thereof is assumed by Grantee.

EXECUTED this 14th day of June, 1996.

GRANDE JOINT VENTURE

By: *Robert H. Patterson*
ROBERT H. PATTERSON,
Joint Venturer

By: *Nina Ruth Patterson Harris*
NINA RUTH PATTERSON HARRIS,
Joint Venturer

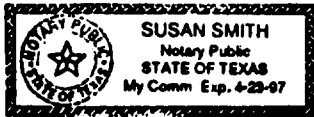
By: Warren V. Simmons
WARREN V. SIMMONS,
Joint Venturer

Grantee's Address:
NorthStar Realty, Ltd.
203 E. Interstate 30
Rockwall, Texas 75087

Filed for Record in:
SMITH COUNTY, TEXAS
MARY MORRIS - COUNTY CLERK
On Jun 18 1996
At 1:39pm
Deputy - Janis Farrell

STATE OF TEXAS *
*
COUNTY OF SMITH *

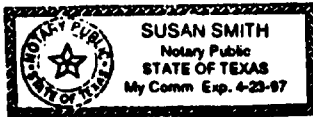
This instrument was acknowledged before me on the 17th day of June, 1996, by ROBERT H. PATTERSON, Joint Venturer on behalf of GRANDE JOINT VENTURE, a Texas Joint Venture.



Susan L Smith
NOTARY PUBLIC, STATE OF TEXAS
PRINTED NAME:
COMMISSION EXPIRES: _____

STATE OF TEXAS *
*
COUNTY OF SMITH *

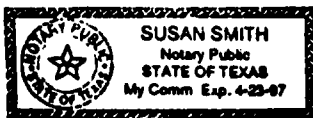
This instrument was acknowledged before me on the 17th day of June, 1996, by NINA RUTH PATTERSON HARRIS, Joint Venturer on behalf of GRANDE JOINT VENTURE, a Texas Joint Venture.



Susan L Smith
NOTARY PUBLIC, STATE OF TEXAS
PRINTED NAME:
COMMISSION EXPIRES: _____

STATE OF TEXAS *
*
COUNTY OF SMITH *

This instrument was acknowledged before me on the 17th day of June, 1996, by WARREN V. SIMMONS, Joint Venturer on behalf of GRANDE JOINT VENTURE, a Texas Joint Venture.



Susan L Smith
NOTARY PUBLIC, STATE OF TEXAS
PRINTED NAME:
COMMISSION EXPIRES: _____

AFTER RECORDING RETURN TO:
Holland & Endres
P. O. Box 747
Tyler, Texas 75710
(File 96-217)

EXHIBIT "A"

All that certain tract or parcel of land, being a 0.949 acre tract in the Marshall University Survey, A-624, Tyler, Smith County, Texas and being part of a called 23.514 acre tract described in a Deed from Federal Deposit Insurance Corporation to Grande Joint Venture in Volume 3577, Page 734 of the Smith County Land Records, Smith County, Texas;

BEGINNING at a 1/2" iron rod found at the Northeast corner of said 23.514 acre tract and being on the West boundary line of a called 125.3 acre tract described in a Deed to Carmen Fears Weaver in Volume 1277, Page 379 of said Smith County Land Records, and also being the Southeast corner of a called 29.7637 acre tract described in a Deed to Alan D. Johnson in Volume 2402, Page 292 of said Smith County Land Records;

THENCE North 80 degrees 37 minutes 26 seconds West, a distance of 59.63 feet with the North boundary line of said 23.514 acre tract and the South boundary line of said 29.7637 acre tract to a 1/2" iron rod set;

THENCE South 00 degrees 26 minutes 10 seconds West, a distance of 695.04 feet to a 1/2" iron rod set on the South boundary line of said 29.7637 acre tract and being on the North right-of-way of Grande Boulevard (90' wide right-of-way);

THENCE South 89 degrees 38 minutes 09 seconds East, a distance of 60.00 feet with said South boundary line of 23.514 acre tract and North right-of-way of Grande to a 1" iron pipe found at the Southeast corner of said 23.514 acre tract and being on the West boundary line of a called 50.0 acre tract described in a Deed to H & P Company in Volume 2875, Page 355 of said Smith County Land Records;

THENCE North 00 degrees 26 minutes 10 seconds East, a distance of 507.37 feet with the East boundary line of said 23.514 acre tract and with said West boundary line of called 50.0 acre tract to a 1/2" iron rod found at the Northwest corner of said 50.0 acre tract;

THENCE North 00 degrees 05 minutes 09 seconds East, a distance of 178.33 feet with the East boundary line of said 23.514 acre tract and with the West boundary line of said 125.3 acre tract to the point of beginning containing 0.949 acre of land.

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was filed
on this date and time stamped hereon by me and
was duly recorded in the Official Public records
of Smith County, Texas



JUN 18 1996

MARY MUMFIS
COUNTY CLERK, Smith County, Texas
By Madys Eudy Deputy

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

HOLLYCREEK VILLAGE

97-R0030447

THE STATE OF TEXAS

§

COUNTY OF SMITH

§

KNOW ALL MEN BY THESE PRESENTS

§

This Declaration, is made on the date hereinafter set forth by NORTHSTAR REALTY, LTD., a Texas Limited Partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, declarant is the owner of that certain tract or parcel of real property, containing 49.84 acres of land situated in Smith County, Texas out of the ^{Marshall} ~~University~~ Survey A - 624, known as HOLLYCREEK VILLAGE, a subdivision in Smith County, Texas, described as follows:

All of the lots in HOLLYCREEK VILLAGE, a subdivision in Smith County, Texas, according to the map of plat thereof recorded in the Office of the County Clerk of Smith County, Texas, at ^{Book 1} ~~Page 100~~ of the Plat Records of Smith County, being further described by Lots, as follows:

Lots 1 through 29, both inclusive, of the Garden Homes; and Lots 1 through 80, both inclusive, of the Villas; and the area designated on the plat as "Future Development".

WHEREAS, it is the desire of the Declarant to develop the property covered by the plat of HOLLYCREEK VILLAGE into a retirement community with the Lots (as that term is hereinafter defined) to be owned and occupied by individuals as further specified in this instrument; and

WHEREAS, the Declarant has deemed it necessary to place certain restrictions, covenants, conditions, stipulations and reservations upon and against the hereinabove described Lots in HOLLYCREEK VILLAGE in order to establish a uniform plan for the development, improvement and sale of the Properties, and to insure the preservation of such uniform plan for the benefit of both the present and future Owners of Lots in said subdivision, together with any replats thereof recorded in the Plat Records in the Office of the County Clerk of Smith County, Texas.

NOW, THEREFORE, Declarant hereby adopts, establishes and imposes upon those above described Lots in HOLLYCREEK VILLAGE and declares the following reservations,

easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of HOLLYCREEK VILLAGE, which reservations, easements, restrictions, covenants and conditions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest therein, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE 1. DEFINITIONS

Section 1. "Association" shall mean and refer to the Retirement Communities of Texas, a Texas non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and those having only an interest in the mineral estate.

Section 3. "Properties" shall mean and refer to the Lots, defined below, and the area designated as "Future Development" on the plat of the subdivision, together with any additional properties made subject to the terms hereof pursuant to the provisions set forth herein.

Section 4. "Lot" and/or "Lots" shall mean and refer to any of the lots described above.

Section 5. "Common Area" shall mean and refer to all property other than the Lots which is currently owned by the Declarant, and which will be owned by the Association for the common use and benefit of the Owners, if any.

Section 6. "Declarant" shall mean and refer to NorthStar Realty, Ltd., its successors and assigns, if such successors and assigns are so designated in writing by Declarant as the successors and assigns of all Declarant's rights hereunder.

Section 7. "Subdivision" shall mean and refer to the Properties.

Section 8. "Architectural Control Committee" shall mean and refer to the Architectural Control Committee for HOLLYCREEK VILLAGE provided for in Article 4 hereof.

ARTICLE 2. RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 1. Recorded Subdivision Plat(s) of the Properties. The recorded subdivision plat(s) of the Properties dedicated for use as such, subject to the limitations as set forth therein, establishes the streets and easements shown thereon and certain minimum set-back lines. To the extent that minimum set-back lines are not reflected on the recorded

subdivision plat, no structure constructed on any of the Garden Home Lot(s) shall be within twenty (20) feet of the front property line, nor within ten (10) feet of the rear property line; nor within five (5) feet of any side property line. Such recorded subdivision plat(s) of the Properties further establishes certain restrictions applicable to the Properties. The dedications, limitations, restrictions and reservations shown on such recorded plats or replats of the subdivision are incorporated herein by reference and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed, or to be executed, by or on behalf of Declarant, conveying said property or any part thereof, whether specifically referred to therein or not.

Section 2. Easements. Declarant reserves for public use the easements as shown on the recorded subdivision plat(s) of the Properties for the purpose of constructing, maintaining and repairing systems of electric lighting, electric power, cable television and telephone line or lines, gas, sewers, and any other utility Declarant sees fit to install in, across and/or under the Properties. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements.

Neither Declarant nor its successors or assigns (including without limitation, any home builder or building company) nor any utility company using the easements herein referred to shall be liable for any damage done by them or their assigns, their agents, employees or servants to fences, shrubbery, trees or flowers or any other property of the Owner of the land covered or affected by said easements. Declarant and its successors and assigns as well as any utility company shall have the right of ingress and egress, from time to time, to go on, over, across and through such easements for the purposes of installing, maintaining and connecting with or to facilities, pipes and lines situated within such easements.

Section 3. Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties by contract, deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, storm sewer, electric lighting, electric power, telephone, cable television or other utility purposes. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property which are utilized for or service other Lots; but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his or her Lot.

Section 4. Rights-of-Way, Streets, Nature Trails and Other Common Areas. All of the Rights-of-Way, Streets, Nature Trails and other Common Areas shall be initially owned by the Declarant. Declarant has agreed, and does by these presents agree that all such areas will be donated, without consideration, to the Association at such time as the development loan secured by the Properties is paid in full. All of such areas are for the use and benefit of the Owners, their guests and invitees, and a license is hereby granted over and across all

such areas to the Owners of the Lots for the use thereof. Such license to use the areas shall be subject to such rules and regulations as promulgated by the Declarant during its ownership of such areas, and thereafter by the Association, from time to time, and as may be reasonable and necessary for the safety and enjoyment of all of the Owners. Notwithstanding anything contained herein to the contrary, it is specifically agreed that the Owners shall at all times have the right of use of all streets for the purpose of providing rights of ingress and egress to and from their Lots to a publicly dedicated roadway for themselves, their invitees and guest.

ARTICLE 3. USE RESTRICTIONS

Section 1. Single Family Residential Construction on Garden Home Lots. No building shall be erected, altered, or permitted to remain on any Lot other than one (1) detached single-family dwelling unit, used for residential purposes only, and not to exceed one (1) story in height. Each dwelling on a Lot shall have a minimum of 1,300 square feet, exclusive of open or screened porches, terraces, patios, carports and garages. Each such dwelling on a Lot shall have an attached garage for two (2) cars. No garage shall be greater in height than one (1) story. Garages shall correspond in style, color and architecture to the main residence structure on the Lot on which such garage is located.

As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on the Lots, or the use of said Lots for duplex units, garage apartments, or apartment houses; provided that this provision shall not preclude the main residence structure from being leased or rented in its entirety as a single residence to one family or person.

No Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose.

No building of any kind, shall ever be moved onto any Lot within the Subdivision, it being the intention that only new construction shall be placed and erected thereon, except with the prior written consent of the Architectural Control Committee.

(a) Minimum Construction Standards:

- i. A minimum of 100% of the first floor wall area, exclusive of trim and openings shall be of masonry, masonry veneer, or stucco construction unless otherwise approved in writing by the Architectural Control Committee.
- ii. The color of masonry, masonry veneer or stucco used on any structure located within the Properties shall be approved in writing by the Architectural Control Committee.
- iii. Stone or brick veneer shall complement the style of the architecture and conform to the color scheme of the improvements constructed upon adjoining Lots.

iv. No external roofing material other than composition roofing, or such other types as are approved by the Architectural Control Committee, shall be constructed or used on any improvements in any part of the Properties. Composition roofing materials must be of 240 lb. or heavier weight per square or equivalent. All roof stacks must be painted to match the roof color.

v. No window or wall-type air conditioners shall be permitted to be used, erected, placed or maintained on or in any improvements in any part of the Properties, except that Declarant may install and use such air conditioners in sales and office facilities within the Properties, provided that the window or wall-type units shall be removed at the time such facilities cease to be so used.

The Architectural Control Committee may in its discretion establish such other and further standards and guidelines for construction as it may determine to be beneficial to the Subdivision and the Owners of the Lots.

(b) Sidewalks. Sidewalks shall be constructed on the Properties as required by applicable federal, state and municipal laws, rules and regulations, and shall be completed, if required, prior to the initial sale of a Lot to a homeowner. Additionally, the Architectural Control Committee may, in its discretion, promulgate rules or guidelines respecting sidewalks.

(c) Location of the Improvements Upon the Lot. No structure shall be located on any Lot nearer to the front line or nearer to the street side line than the minimum building setback line shown on the recorded plats or replats, or as otherwise provided herein. For the purposes of this subsection (c), eaves, steps and unroofed terraces shall not be considered as part of a building; however, nothing herein contained shall be construed as permitting any portion of any building on a Lot to encroach upon another Lot. Unless otherwise approved in writing by the Architectural Control Committee, each main residence building shall face the front building line.

(d) Approval of Builders. Any homebuilder, or building company constructing a home on a Garden Home Lot must be approved by the Architectural Control Committee; provided, however, any such homebuilder or building company retained by the Declarant, or the Declarant acting in such capacity shall not be required to seek such approval.

(e) Composite Building Site. With the written approval of the Architectural Control Committee and any applicable governmental rules, regulations or ordinances, any Owner of one or more adjoining Lots or portions thereof may consolidate such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the front footage at the building set-back lines shall be measured from the resulting side property lines rather than from the lot lines as indicated

on the recorded plat. Any such resulting composite building site must have a frontage at the building set-back line of not less than sixty (60) feet. In the event of a composite building site, any set back lines shown on the recorded plat, or any replat, or as specified herein shall only be applicable to the side lot lines of the composite site.

Section 2. Construction on Villa Lots. No building shall be erected, altered, or permitted to remain on any Lot other than a single-family dwelling unit, used for residential purposes only, and not to exceed one (1) story in height. All plans for units constructed must be approved by the Architectural Control Committee. Each such dwelling on a Lot shall have a detached covered parking area for two (2) cars, with such covered parking area being located behind the dwelling unit. No covered parking area shall be greater in height than one (1) story. The covered parking area shall correspond in style, color and architecture to the main residence structure on the Lot on which such covered parking area is located. The individual patio area for each residential dwelling unit constructed on a Villa Lot must be enclosed by a six (6) foot wooden or brick privacy fence.

As used herein, the term "residential purposes" shall be construed to prohibit mobile homes or trailers being placed on the Lots, or the use of said Lots for duplex units, garage apartments, or apartment houses; provided that this provision shall not preclude the main residence structure from being leased or rented in its entirety as a single residence to one family or person.

No Lot shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purpose.

No building of any kind, shall ever be moved onto any Lot within the Subdivision, it being the intention that only new construction shall be placed and erected thereon, except with the prior written consent of the Architectural Control Committee.

(a) Minimum Construction Standards:

- i. A minimum of 80% of the first floor wall area, exclusive of trim and openings shall be of masonry, masonry veneer, or stucco construction unless otherwise approved in writing by the Architectural Control Committee.
- ii. The color of masonry, masonry veneer or stucco used on any structure located within the Properties shall be approved in writing by the Architectural Control Committee.
- iii. Stone or brick veneer shall complement the style of the architecture and conform to the color scheme of the improvements constructed upon adjoining Lots.
- iv. No external roofing material other than composition roofing, or such other types as are approved by the Architectural Control Committee, shall be constructed or used on any improvements in any part of the Properties. Composition roofing materials must be

of 240 lb. or heavier weight per square or equivalent. All roof stacks must be painted to match the roof color.

v. No window or wall-type air conditioners shall be permitted to be used, erected, placed or maintained on or in any improvements in any part of the Properties, except that Declarant may install and use such air conditioners in sales and office facilities within the Properties, provided that the window or wall-type units shall be removed at the time such facilities cease to be so used.

vi. All common walls between individual dwelling units must be constructed in such a manner as to comply with all rules, regulations, laws and ordinances, and at a minimum must be rated a four (4) hour fire wall which extends beyond the common roof.

vii. The Architectural Control Committee may in its discretion establish such other and further standards and guidelines for construction as it may determine to be beneficial to the Subdivision and the Owners of the Lots.

Section 3. Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be, or may become, an annoyance or a nuisance to the neighborhood. This restriction shall not limit normal sales activities required by the Declarant to sell homes in the subdivision and the lighting effects utilized to display the model homes. Outside lighting fixtures shall be placed so as to illuminate only the yard of the owner of such fixture, and so as not to affect or reflect into surrounding houses or yards. No mercury vapor, sodium or halogen type lights shall be installed on any Lot within the Properties so that the same is visible from any public street. Notwithstanding the foregoing sentence, Declarant may install and maintain such lighting as it may determine to be necessary in connection with sales and model homes facilities; provided, however that such lighting shall be placed in compliance with the foregoing sentence prior to or contemporaneously with the discontinuation of the use of any such facility as a sales or model home facility or the sale of such facility to an individual Owner.

Any buildings or improvements within the Properties which are damaged or destroyed partially or totally by fire, storm or any other means shall be repaired within a reasonable period of time not to exceed sixty (60) days from the occurrence of such damage and the Lot shall be restored to a clean, orderly and attractive condition within the same period. Any buildings or improvements which are damaged or destroyed to the extent that repairs are not practicable, shall be demolished and removed within a reasonable period of time not to exceed ninety (90) days from the occurrence of such damage and the Lot shall be restored to a clean and attractive condition within the same period.

Section 4. Use of Temporary Structures. No structure of a temporary character, trailer, garage, barn or other outbuilding shall be maintained or used on any Lot at any time

as a residence, or for any other purpose; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Properties. Such facilities may include, but are not necessarily limited to, sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

Section 5. Storage of Automobiles, Boats, Trailers and Other Vehicles. No motor vehicle may be parked on any Lot, any easement, right-of-way, or common area or in the street adjacent to any Lot, easement, right-of-way or common area unless such motor vehicle is parked within the garage on such Lot or on the driveway on such Lot. Garage doors visible from any street shall be kept in the closed position except when the garage is being actively used by the Owner or occupant of the Lot.

No non-motorized vehicle, trailer, recreational vehicle, boat, marine craft, hovercraft, aircraft, inoperative vehicle, vehicle not in daily use, machinery or equipment of any kind may be parked or stored on any part of any Lot, street, easement, right-of-way, or common area unless such object is concealed from public view inside a garage or other enclosure approved by the Architectural Control Committee.

This restriction shall not apply to any vehicle, machinery, or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses within the Properties.

Section 6. Water and Mineral Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or on any Lot, nor shall any oil, gas, mineral or water wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 7. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or common household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No more than two (2) of each type of common household pet will be permitted on each Lot. If common household pets are kept, they must be confined to a fenced backyard (such fence shall encompass the entire backyard) or within the house. When away from the Lot of its owner, a pet must be on a leash at all times. It is the pet owner's responsibility to keep the Lot clean and free of pet debris. It will also be the pet owner's responsible for any removal of any debris created by the pet in any area of the retirement community.

Section 8. Walls, Fences and Hedges. No hedge in excess of three (3) feet in height, and no walls or fences of any height, shall be erected or maintained nearer to the front lot line than the plane of the front exterior wall of the residential structure on such Lot.

No side or rear fence, wall, or hedge shall be more than eight (8) feet high. All fences must be constructed of ornamental iron, wood, or masonry. No chain link fence shall be placed on any Lot without the express prior approval in writing of the Architectural Control Committee, as hereinafter provided, except to enclose a swimming pool if such chain link fence is not visible from any street. Lots P1 through P20 and P26 through P28 shall be required to have a 4' high black rod iron fence along the back property line as these lots are adjacent to a nature trail. Lots P21 through P25 are required to have a 6' brick fence along the back property line and Lots P29 through P35 are required to have a fence along the back property line to be constructed out of ornamental iron, wood, or masonry.

Section 9. Visual obstruction at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two feet and eight (8) feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points ten (10) feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lot.

Section 10. Lot Maintenance. In no event shall any Owner or occupant use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. In addition to the purposes set forth in Article 6, Section 2 hereafter, it shall be the duty and responsibility of the Association to provide for the cutting and maintaining of the yards of each Lot in a sanitary, healthful and attractive manner; provided, however, the Association shall not be required to cut or maintain the front yard of any Lot owned by the Declarant or a building company unless the full assessment (as provided in Article 6) is being paid on such Lot. The front yard of each Lot shall be required to have an underground sprinkler system.

The drying of clothes in public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, or storage piles, which are incident to the normal residential requirements of a typical family. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Containers for the storage of trash, garbage and other waste materials must be stored out of public view. Equipment for storage or disposal of such waste materials shall be kept in a clean and sanitary condition and shall be stored out of public view. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the street paving.

Section 11. Signs, Advertisements, Billboards. Except for signs owned by Declarant or by builders advertising their model homes during the period of original construction and home sales, no sign, poster, advertisement or billboard or advertising structure of any kind other than a normal "For Sale" sign not to exceed five (5) square feet in total size may be erected or maintained on any Lot in said Subdivision. Declarant, or its assigns, will have the right to remove any sign, advertisement, billboard, or advertising structure that does not comply with the above, and in so doing shall not be subject to any liability in trespass or otherwise in the connection therewith or arising from or in connection with such removal. Notwithstanding anything contained herein to the contrary, the Association shall have the right to erect and maintain such signage as it deems appropriate.

House or address numbers and name identification within the Subdivision must be harmonious with the overall character and aesthetics of the Subdivision and the decision of the Architectural Control Committee as to such matters shall be conclusive.

Section 12. Antennas and Flagpoles. No radio or television aerial wires or antenna, including without limitation, satellite reception dishes, or wires, shall be visible from the street which runs in front or adjacent to any Lot; nor shall any antenna of any style be permitted to extend above the roof line of the main residential structure on said Lot, nor be located behind the back building line of said Lot. No flagpole shall be permanently erected or placed on any Lot unless the same has been previously approved in writing by the Architectural Control Committee. In this regard, it is contemplated that flagpoles may be erected by Declarant in connection with its sales activities and model homes. Flagpoles may also be erected by Declarant at all Subdivision entries. Flagpoles so erected by Declarant shall be deemed to have Architectural Control Committee approval.

Section 13. Maintenance of Building Exterior and Lot. No change of paint, brick or roof color shall be permitted without approval by the Architectural Control Committee. The Owner of each Lot shall keep the improvements on such Lot, including the house, the garage, all paved surfaces and all painted surfaces, in a neat, well-maintained and attractive condition. Without limitation of its other legal remedies, in the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, following sixty (60) days written notification to said Owner, through the Association's agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

No decorative appurtenances, such as statues, sculpture, birdhouses, birdbaths, fountains or decorative objects or embellishments shall be installed or placed on front lawns or in any other location visible from any public street unless such specific items have been approved in writing by the Architectural Control Committee.

No wind generators shall be erected, installed or maintained on any Lot within the Properties.

No solar collector shall be installed on any Lot without the prior written consent of the Architectural Control Committee. Any such installation shall be in harmony with the design of the residence upon which such collector is installed.

Section 14. Private Utility Lines. All electrical, telephone and other utility lines, pipes and facilities which are placed or located on a Lot and are not owned by a governmental entity or a public utility company shall be installed underground unless otherwise approved in writing by the Architectural Control Committee.

Section 15. Age Requirements. Because the Subdivision is intended as a retirement community, to live in HOLLYCREEK VILLAGE, an individual must be at least 50 years of age; provided, however, for married couples, only one spouse must have attained the age of 50 years. Children under the age of 25 years may not permanently live with a parent or parents who have attained the age of 50 years unless the child is the primary care provided for the parent(s). Notwithstanding the foregoing, the foregoing is not intended to prevent temporary visits from children, relatives or friends who are under 50 years of age, provided such visits are for periods not to exceed two (2) consecutive weeks. Upon prior request, the Association may grant variances to the length of time that temporary visits may last. These age requirements do not apply to the staff of Hollycreek Village and their families who reside on site.

ARTICLE 4. ARCHITECTURAL CONTROL COMMITTEE

Section 1. A. Approval of Building Plans. No building shall be erected, placed, or altered on any Lot until the construction plans and specifications, as well as a plot plan showing the location of the structure have been approved in writing as to the following: harmony of exterior design and color with existing structures, location with respect to topography and finished ground elevation, and compliance with minimum construction standards by the Architectural Control Committee. A copy of the construction plans and specifications and a plot plan, together with such information as may be deemed pertinent, shall be submitted to the Architectural Control Committee or its designated representative prior to commencement of construction. The Architectural Control Committee may require the submission of such plans, specifications, and plot plans, together with such other documents as it deems appropriate, in such form and detail as it may elect at its sole discretion. The Architectural Control Committee shall have full and complete authority to approve construction of any improvement on any Lot, and its judgment shall be final and conclusive.

B. Approval of Landscape Plans. A landscape plan must be submitted for approval for each garden home.

Section 2. Committee Membership. The Architectural Control Committee members shall be initially composed of Ken Cauthen, Mark F. Kelldorf and Austin Lewis, who, by majority vote may designate a representative to act for them, and who shall have the right to assign by instrument in writing delegating such capacities and rights to the Association when the Committee determines in its sole discretion to do so. The initial address of the Committee is 203 East Interstate 30, Rockwall, TX 75087.

Section 3. Replacement. At such time as ten (10) Lots are sold to individuals who are occupying the dwellings constructed on such Lots as their primary residence, Austin Lewis shall be replaced on the Architectural Control Committee by an owner of one of the Lots as selected by the Association. In the event of death or resignation of any member or members of said Committee, the remaining member or members shall appoint a successor member or members; and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted or to designate a representative with like authority.

Section 4. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby.

Section 5. Term. The duties and powers of the initial Architectural Control Committee and of the herein designated representatives shall cease on the expiration of forty (40) years from the date of this instrument. Thereafter, all power vested in said initial Committee by this covenant shall cease and terminate; provided, that any time after January 1, 2000, whether or not the term of the Architectural Control Committee specified above shall have expired, by a two-thirds (2/3rds) vote of the members of the Association present and voting, the Board of Directors of the Association may assume the duties and powers of the Architectural Control Committee, and thereafter the Board of Directors of the Association shall have all of the rights, benefits and powers provided herein for the Architectural Control Committee.

Section 6. Variances. This Declaration contains a number of provisions in which the Architectural Control Committee is expressly granted the authority, in its discretion, to permit variances from the effect of a particular restrictive covenant. The Architectural Control Committee may require the submission to it of such documents and items (including, without limitation, a written request for and description of the variances requested, plans, and specifications, plot plans and samples of materials) as it shall deem appropriate, in

connection with its consideration of a request for a variance. If the Architectural Control Committee shall approve such request for a variance, the Architectural Control Committee may evidence such approval and grant its permission for such variance only by written instrument, addressed to the Owner of the Lot(s) relative to which such variance has been requested describing the applicable restrictive covenant(s) and the particular variance requested, expressing the decision of the Architectural Control Committee to permit the variance, describing (when applicable) the conditions on which the variance has been approved (including, without limitation, the type of alternate materials to be permitted, the alternate fence height approved or specifying the location, plans and specifications applicable to an approved carport), and signed by a majority of the then members of the Architectural Control Committee (or by the Committee's designated representative if one has been designated under the authority contained in Section 2 above). Any request for a variance shall be deemed to have been disapproved for the purposes hereof in the event of either (a) written notice of disapproval from the Architectural Control Committee; or (b) failure by the Architectural Control Committee to respond to the request for variance within thirty (30) days of the Committee's receipt of such request. In the event the Architectural Control Committee or any successor to the authority thereof shall not then be functioning, and/or the term of the Architectural Control Committee shall have expired and the Board of Directors of the Association shall not have succeeded to the authority thereof as herein provided, no variances from the covenants of this Declaration shall be permitted, it being the intention of Declarant that no variances be available except in the discretion of the Architectural Control Committee or, if it shall have succeeded to the authority of the Architectural Control Committee in the manner provided herein, the Board of Directors of the Association.

Section 7. No Liability. The Declarant, the Architectural Control Committee, the individual members and designees of the Architectural Control Committee, the Association and the members of the Board of Directors of the Association shall have no liability in connection with services rendered on behalf of such Committee, or on behalf of the Association, or for any act or omission in performing or purporting to perform the functions delegated hereunder. No approval (or failure to disapprove) by the Architectural Control Committee or the Association shall be deemed or construed to be any representation or warranty, express or implied, as to the fitness or habitability of any structure or improvements constructed within the Properties.

ARTICLE 5.

Section 1. Non-profit Corporation. The Retirement Communities of Texas, a Texas non-profit corporation, has been duly chartered and organized and it shall be governed by the Articles of Incorporation of said Association and by the laws of the State of Texas. All duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 2. Cessation of existence. If the Association should ever cease to exist, or fail to maintain its authority to do business, then, in such event, the owners of the Lots may elect to form a non-profit corporation, and the title to the properties within the subdivision which are owned by the Association shall revert to such entity.

ARTICLE 6. MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Lot is hereby subjected to an annual maintenance charge, and the Declarant, for each Lot it owns, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments of charges levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of common areas, if any. The uses of the maintenance assessment fund may include, by way of example but without limitation, at the Association's sole discretion, any and all of the following: maintaining common areas (including the improvements located thereon), providing services to the owners of the Lots as may from time to time be published and declared as "provided services", maintaining parkways, repair of the walkways, steps, entry gates, or fountain areas, if any; maintaining right-of-ways, easements, esplanades and other public areas, if any; construction and operation of all street lights; purchase and/or operating expenses of recreation areas, if any; payment of all legal and other expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions, and conditions affecting the Properties to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the maintenance charge and assessment; employing policemen and watchmen; if desired, caring for vacant Lots and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep the Properties in the Subdivision neat and in good order, or which is considered of general benefit to the Owners or occupants of the Properties. It is understood that the judgement of the Board of Directors of the Association in the expenditure of said funds shall be final and conclusive so long as such judgement is exercised in good faith.

Section 3. Rate and Commencement of Assessment. The maintenance charge shall commence and begin to accrue on each Lot in HOLLYCREEK VILLAGE on the first day of the first month following the conveyance of such Lot to an individual owner. The rate at which each Lot will be assessed will be determined annually, and may be adjusted from

year to year by the Board of Directors of the Association as the needs of the Subdivision may, in the judgement of the Board of Directors of the Association, require; provided that such assessment will be uniform. The Association can collect special assessments as well as annual charges above described whenever the members so vote.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a building company, the maximum monthly assessment shall be \$200.00 per Lot. The Association may elect, in its sole discretion to collect less than the amount specified, prior to the time all improvements on common areas are completed. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant or a building company, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership. The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum, and shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the annual assessment period, which shall begin on the first day of January of each year. Written notice of the annual assessment shall be sent to every Owner subject thereto.

Section 5. Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten (10%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or may foreclose the Association's lien against the Lot (and improvements thereon). Interest as above specified, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a deed hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure in the name of the Association in a like manner as a mortgage or deed of trust lien foreclosure on real property, and such Owner expressly grants to the Association a power of sale and nonjudicial foreclosure in connection with the lien. No Owner may waive or otherwise escape liability for the assessments provided hereby by non-use of the facilities or services provided by the Association or by abandonment of the Lot.

Section 6. Subordination of the Lien to Mortgages. To secure the payment of the maintenance fund and all annual and special assessments established hereby and to be levied on individual residential Lots, there is hereby reserved in each deed (whether specifically stated therein or not) by which the Declarant shall convey such Lots, a Vendor's Lien for benefit of the Association, said lien to be enforceable through appropriate proceedings at law by such beneficiary. However, each such lien shall be secondary, subordinate and inferior to all liens, present and future given, granted and created by or at the instance and request of the Declarant or the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or the construction of improvements on any such Lot to the extent of any such maintenance fund charge or annual

or special assessments accrued and unpaid prior to foreclosure of any such purchase money lien or construction lien. A sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

Section 7. **Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the Common Area, if any. Failure of any Owner to pay such fees shall give rise to the same liability and lien rights as set forth above in the case of assessments.

(b) The right of the Association to suspend the rights and right to use recreational facilities, if any, situated on the Common Area, if any, by an Owner for any period during which any assessment or other charge provided for herein against his or her Lot remains unpaid, and to publish rules and regulations for the use of the Common Area, including the right of the Association to suspend the right and easement for a period not to exceed ninety (90) days for an infraction of the Association's published rules and regulations.

Section 8. **Future Development.** The Association shall have the right to determine the use of the area designated on the Plat as "Future Development" so long as such use is not inconsistent with a retirement community.

ARTICLE 7. GENERAL PROVISIONS

Section 1. **Term.** These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by a majority of the then Owners of the Lots has been recorded agreeing to change or terminate said covenants in whole or in part. The terms and provisions of these restrictions may be amended at any time when an instrument setting forth said changes and approved or executed by the persons or entities holding fifty-one percent (51%) of the Lots in HOLLYCREEK VILLAGE is placed of record in the Official Records of Smith County, Texas. Upon any violation or attempt to violate any of the covenants herein, it shall be lawful for the Association or any other Owner to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from doing so or to recover damages for such violations or both. Failure by any Owner or the Association to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

The Declarant shall have, and does hereby reserve the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by an instrument in writing, duly executed, acknowledged and filed of record in the Office of the County Clerk of Smith County, Texas for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration and any Supplemental Declarations taken collectively, and shall not impair or affect the vested property rights of any Owner or his or her mortgagee.

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

Section 3. Interpretation. If this Declaration or any word, clause, sentence, paragraph or other part thereof shall be susceptible to conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall control.

Section 4. Omissions. If any punctuation, word, clause, sentence or provision necessary to give meaning, validity or effect to any other word, clause, sentence or provision appearing in this Declaration shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

EXECUTED this 18th day of August 1996.

NORTHSTAR REALTY, LTD., A TEXAS LIMITED PARTNERSHIP

By: 
MARK KELLDORF, General Partner

Filed for Record in
SMITH COUNTY, TEXAS
MARY MORRIS - COUNTY CLERK

On Aug 22 1997
At 3:37pm

Deputy - Jennette Stevenson

CONSENT OF LIENHOLDER

The undersigned, being the current, existing mortgagees of liens against HOLLYCREEK VILLAGE, Smith County, Texas do hereby consent to the foregoing Declaration of Covenants, Conditions and Restrictions, and do further agree that liens against the property will be subordinate to the restrictions created hereby, except in no event shall this subordination apply to the Assessments provided for in Article 6.

AUSTIN BANK WHITEHOUSE, TX, MA

By: [Signature]
Name: JERRY WOOLVERTON
Title: SR. VICE PRESIDENT

THE STATE OF TEXAS
COUNTY OF SMITH

§
§
§

THIS INSTRUMENT was acknowledged on the 18th day of August 1997 by MARK S. KELLDORF, General Partner of NORTHSTAR REALTY, LTD., a Texas Limited Partnership, on behalf of said partnership.



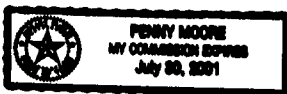
Beverly Whatley
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS
COUNTY OF SMITH

§
§
§



THIS INSTRUMENT was acknowledged on the 21 day of AUGUST 1997 by Jerry Woolverton (Name of Officer), SVP (Title of Officer) of Austin Bank Whitehouse on behalf of said corporation.



Penny Moore
NOTARY PUBLIC, STATE OF TEXAS
STATE OF TEXAS - COUNTY OF SMITH
I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the Official Public records of Smith County, Texas

After Recording Return To:
James B. Gillen, Jr.
613 Shelley Park Plaza
Tyler, Texas 75701



AUG 22 1997

MARY MORRIS
COUNTY CLERK, Smith County, Texas
[Signature] Deputy

99-R0045339

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK

On Oct 14 1999
At 1:56pm

Deputy - Janis Farrell

FIRST AMENDMENT AND RESTATEMENT ⁴⁸
OF
DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
FOR
HOLLYCREEK VILLAGE
Tyler, Smith County, Texas

Declarant

NORTHSTAR REALTY, LTD.

After recording please return to:
Northstar Realty, Ltd.
Hall-Dietz Venture No. 2
821 ESE Loop 323, Suite 310
Tyler, TX 75701

**FIRST AMENDMENT AND RESTATEMENT
OF
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
HOLLYCREEK VILLAGE**

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FIRST AMENDMENT AND RESTATEMENT
OF
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR
HOLLYCREEK VILLAGE

This Declaration of Covenants, Conditions & Restrictions for HOLLYCREEK VILLAGE is made by NORTHSTAR REALTY, LTD., a Texas limited partnership ("Declarant"), on the date signed below.

On August 18, 1997, Declarant executed a Declaration of Covenants, Conditions, and Restrictions covering a parcel of real property containing 49.84 acres of land situated in Smith County, Texas. The Declaration was filed for record with the County Clerk of Smith County, Texas, in Volume 3999, Page 240.

Under Article 7, Section 1. of the declaration it states inter alia:

The terms and provisions of these restrictions may be amended at any time when an instrument setting forth said changes and approved or executed by the persons or entities holding fifty-one percent (51%) of the Lots in HOLLYCREEK VILLAGE is placed of record in the Official Records of Smith County, Texas.

The Declaration covers the following Property:

Lots 1 through 29, both inclusive, of the Garden Homes; and Lots 1 through 80, both inclusive, of the Villas; and the area designated on the Plat as "Future Development".

Declarant is the Owner of all Lots, except ten (10) Garden Home Lots and three (3) Townhome Lots and therefore owns in excess of fifty-one percent (51%) of the Lots of HOLLYCREEK VILLAGE.

Declarant is desirous of amending and restating the Declaration in its entirety in order to complete the development of HOLLYCREEK VILLAGE in a more orderly and efficient manner and to comply with the requests of Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.

NOW THEREFORE, the Declaration is hereby amended and is restated in its entirety as set forth herein.

ARTICLE 1

DEFINITIONS

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

1.1. "Areas of Common Responsibility" means portions of Lots or Dwellings that are maintained by the Association, as a common expense.

1.2. "Assessment" means any charge levied against a Lot or Owner by the Association, pursuant to the Documents, and include Regular Assessments, Special Assessments, and Individual Assessments, as defined in Article 5 of this Declaration.

1.3. "Association" means the Association of Owners of Lots in the Property, to be organized as a Texas nonprofit nonstock corporation named THE HOME OWNERS OF HOLLYCREEK VILLAGE, INC.

1.4. "Board" means the Board of Directors of the Association.

1.5. "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

1.6. "Common Area" means certain real and personal property owned or to be owned by the Association for the use and enjoyment of the Members. The initial Common Area is described in Article 2 below.

1.7. "Declarant" means NORTHSTAR REALTY, LTD., a Texas limited partnership, or its successor, who is developing the Property.

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

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

1.10. "Development Period" means that period of time during which the Property is being developed, constructed, or marketed, and extends from the date this Declaration is recorded until title to all of the Lots that may be created, including any annexed Lots, has been conveyed to Owners other than builders or other persons who purchase Lots for the

purpose of constructing Dwellings for resale to Owners. The Development Period may not exceed four (4) years.

1.11. **"Director"** means a Member of the Association's Board.

1.12. **"Documents"** means, singly or collectively as the case may be, this Declaration, the Plat, the Bylaws, the Association's articles of incorporation, and the Rules and architectural restrictions of the Association, as any of these may be amended from time to time.

1.13. **"Dwelling"** means the single family residence on a Lot, and all other improvements on the Lot. Where the context indicates or requires, "Dwelling" includes the Lot.

1.14. **"Garden Home"** means a single-family detached Dwelling with a back yard and setbacks.

1.15. **"Lot"** means a portion of the Property other than the Common Area, intended for independent ownership, on which there is or will be constructed a Dwelling, as shown on the Plat. Where the context indicates or requires, "Lot" includes the Dwelling.

1.16. **"Majority"** means more than half.

1.17. **"Member"** means a Member of the Association, each Member being an Owner of a Lot, unless the context indicates that Member means a Member of the Board or a Member of a committee of the Association.

1.18. **"Mortgagee"** means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded senior or first deed of trust lien against a Lot.

1.19. **"Owner"** means a holder of recorded fee simple title to a Lot. Declarant is the initial Owner of all Lots. Contract sellers and Mortgagees who acquire title to a Lot through a deed in lieu of foreclosure or through judicial or nonjudicial foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every is a Member of the Association.

1.20. **"Plat"** means all Plats, singly and collectively, recorded or to be recorded in the Real Property Records of Smith County, Texas, and pertaining to HOLLYCREEK VILLAGE, an addition to the City of Tyler, including all dedications, limitations, restrictions, easements, and reservations shown on the Plat, as the Plats may be amended from time to time.

1.21. **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is HOLLYCREEK VILLAGE. The Property is located entirely in the City of Tyler, Smith

County, Texas. The Property is located on land described in Appendix A to this Declaration, as shown on the Plat, and includes every Lot and Common Area thereon.

1.22. "Resident" means an occupant of a Dwelling, regardless of whether the person owns the Lot.

1.23. "Rules" means rules and regulations adopted by the Board in accordance with the Documents.

1.24. "Townhome" means a single-family detached Dwelling with no setbacks.

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

1.26. "Water Resources" means all of the water management system components which may be located wholly within the Property, including the lake, water retention areas, creeks and drainage ditches, swales, and all structures, pipes, conduits, and other connectors among any of the them.

ARTICLE 2

THE PROPERTY

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

2.2. ADDITIONAL PROPERTY. The real property shown on Appendix A described as Additional Property which adjoins the Property described in Paragraph 2.1 may be annexed to the Property and be subjected to the Declaration and the jurisdiction of the Association by Declarant during the Development Period, as permitted in Appendix B. Otherwise, the addition of real property to the Property requires the approval of Owners of at least a majority of the Lots. Annexation of additional real property is accomplished by recording a declaration of annexation, including an amendment of Appendix A, in the county's real property records.

2.3. SUBJECT TO DOCUMENTS. The real property subject to this Declaration is also subject to the Plat, the Bylaws, the Association's articles of incorporation, and the Rules and

architectural restrictions, if any, of the Association, as any of these may be amended from time to time.

2.4. DECLARANT'S RIGHTS & RESERVATIONS. The Property and the Documents are subject to the representations, rights, and reservations of Declarant, as stated in Appendix B of this Declaration. If a provision of Appendix B conflicts with any other provision of the Documents, the terms of Appendix B control. Declarant's representations, rights, and reservations are intentionally segregated as an appendix to facilitate use of this Declaration by Owners after the Declarant-related provisions are obsolete. This Section and every other provision of the Documents that benefits Declarant may not be amended without evidence of Declarant's consent on the instrument of amendment.

2.5. OVERALL DEVELOPMENT. As originally conceived by Declarant, the first phase of the Property consists of thirty-five (35) Garden Home Lots and eighty (80) Townhome Lots to be improved with single-family Dwellings in accordance with Lot type. Private streets and other Common Area amenities, including a lake, are also located in the first phase. The overall development, including the number and type of Lots and amenities has not been determined as of the date of this Declaration. The Declarant retains the option but not the obligation to replat the number of unsold Lots and their type and layout in the first phase and to annex the Additional Property described in Paragraph 2.2 and shown on Appendix A as Additional Property. The size and number of additional phases has not been determined as of the date hereof; however, any subsequent annexations will be in harmony with the first phase.

2.6. COMMON AREAS. The Common Areas of the Property consist of the following, and any modification of, replacement of, or addition to these:

2.6.1. Lake and Activity Center Area. The land described in Appendix A as Common Area Land and improvements thereon, including a lake, activity center, fenced area, and parking area.

2.6.2. Screening Wall. The masonry or wood screening wall around the perimeter, regardless of whether the wall is on a Lot or a public right-of-way.

2.6.3. Maintenance Easement. The lawns, landscaping, and sprinklers, and the screening wall, regardless of whether on a Lot or a public right-of-way, activity center, and common parking areas, if any.

2.6.4. Property Entrances. If any: (1) security gates; (2) signage; (3) planter boxes and fencing; (4) electrical and water installations on utility meters in the Association's name; (5) grass, shrubs, ground cover, and trees, served by the Association's sprinkler lines.

2.6.5. Street Lamps. Any pole lamps on the Property that are used for street lighting, to the extent they are not maintained by the City of Tyler.

2.6.6. Personalty. Any personal property owned by the Association, such as books and records, office equipment, and furniture.

ARTICLE 3

MAINTENANCE OBLIGATIONS

3.1. OVERVIEW. Generally, the Association alone shall maintain the Common Areas, the landscaping, and exterior of each Townhome Dwelling and the Owner maintains the interior and enclosed garage area of his Dwelling not otherwise covered by a maintenance easement to the Association. The exterior of each Garden Home Dwelling will be maintained by the Owner. If an Owner fails to maintain his Dwelling, the Association may perform the work at the Owner's expense.

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

- a. All Common Areas.
- b. The Exterior of each Garden-type Dwelling.
- c. The Areas of Common Responsibility.
- d. All Landscaping.
- e. Termite Extermination on BOTH Interior and Exterior of each Townhome Dwelling.

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

3.3.1. Lot Maintenance. Each Owner, at the Owner's expense, must maintain the interior of his Dwelling, including the enclosed garage area. Maintenance includes, as needed, preventative maintenance, repairs, and replacement. Each Owner of a Garden Home Dwelling shall maintain the exterior of his Dwelling and his back yard. Each Owner is expected to maintain his Dwelling at a level, to a standard, and with an appearance that is commensurate with other Units in the Property.

3.3.2. Extermination. Each Owner is responsible for extermination of insects and other pests, except for termites, inside his Dwelling.

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

3.3.4. Responsible for Damage. An Owner is responsible for his own willful or negligent acts and those of his or the Resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the Common Areas, the Area of Common Responsibility, or the property of another Owner.

3.3.5. Owner's Default in Maintenance. If the Board determines that an Owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the Owner is responsible, the Board may give the Owner written notice of the Association's intent to provide the necessary maintenance at Owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the Owner fails or refuses to timely perform the maintenance, the Association may do so at Owner's expense, which is an individual Assessment against the Owner and his Lot. In case of an emergency, however, the Board's responsibility to give the Owner written notice may be waived and the Board may take any action it deems necessary to protect persons or property, the cost of the action being the Owner's expense.

BEFORE ACQUIRING AN OWNERSHIP INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER IS STRONGLY ENCOURAGED to contact the Association to obtain and review the most recent designation of Areas of Common Responsibility, which is subject to change from time to time.

3.4. AREA OF COMMON RESPONSIBILITY. The Association, acting through its Members only, has the right but not the duty to designate, from time to time, portions of Lots or Dwellings as Areas of Common Responsibility to be treated, maintained, repaired, and/or replaced by the Association as a common expense. The cost of maintaining Areas of Common Responsibility is added to the annual budget and assessed uniformly against all Lots as a regular Assessment, unless Owners of at least a majority of the Lots decide to assess the costs as individual Assessments.

3.4.1. Change in Designation. The Association may, from time to time, change the designation of Areas of Common Responsibility, or provide for no Areas of Common Responsibility. Because the designation is subject to change, the Association will maintain at all times a dated list of the Areas of Common Responsibility for distribution to Owners and prospective purchasers. Additions, deletions, or changes in designation must be:

- a. Approved by Owners of at least a majority of the Lots.

- b. Published and distributed to an Owner of each Lot.
- c. Reflected in the Association's annual budget and reserve funds.

3.4.2. Initial Designation. Although future designations need not be recorded, the initial designation of Areas of Common Responsibility is stated here for purpose of illustration only. On the date this Declaration is recorded, Areas of Common Responsibility are limited to exterior maintenance of each Townhome Dwelling, all landscaping, except the back yards of Garden Home Dwellings, maintenance of all Common Areas, and termite extermination for the exterior and interior of each Townhome Dwelling. Subject to approval of the Board of Directors, Owners of Townhome Dwellings may designate their respective front yards as Area of Common Responsibility subject to payment of the additional costs through increased assessments, respectively.

3.5. PARTY WALLS:

3.5.1. General Rules Of Law To Apply. Each wall which is built as a part of the original construction of the Townhomes upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If the party wall is on one (1) Lot or another due to an error in construction, such wall shall, nevertheless, be deemed to be on the dividing line and constitute a party wall for purposes of this Section. Reciprocal easements shall exist upon and in favor of the adjoining Townhome Lots for the maintenance, repair, and reconstruction of party walls.

3.5.2. Maintenance Costs. The Owners of the adjoining Lots share equally the costs of repair, reconstruction, or replacement of the party wall, subject to the right of one Owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an Owner is responsible for damage to or destruction of the wall, that Owner will bear the entire cost of repair, reconstruction, or replacement. If an Owner fails or refuses to pay his share of costs of repair or replacement of the party wall, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Smith County, Texas, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within 90 days after the date of repairs or replacements to the party wall, and suit is filed within one year after the date the lien is filed. The right of an Owner to contribution from another Owner under this Section is appurtenant to the land and passes to the Owner's successors in title.

3.5.3. Alterations. The Owner of a Lot sharing a party wall may not cut openings in the wall or alter or change the wall in any manner that affects the use, condition, or appearance of the wall to the adjoining Lot. The party wall will always remain in the same location as when erected.

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

3.5.5. Right To Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

3.5.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Section each party shall choose one (1) arbitrator. Those arbitrators shall in turn choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

ARTICLE 4

ASSOCIATION AND MEMBERSHIP RIGHTS

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

4.2. MEMBERSHIP. Each Owner is a Member of the Association, ownership of a Lot being the sole qualification for Membership. Membership is appurtenant to and may not be separated from ownership of the Lot. An attempt to separate Membership in the Association from ownership of the Lot is void and will not be recognized by the Association. The Board may require satisfactory evidence of transfer of ownership before a purported Owner is entitled to vote at meetings of the Association.

4.2.1. Co-Owners. If a Lot is owned by more than one person or entity, each Co-Owner is a Member of the Association and may exercise the Membership rights appurtenant to the Lot.

4.2.2. Contract Purchasers. A Member who sells his Lot under a contract for deed may delegate his Membership rights to the contract purchaser, provided a written assignment is delivered to the Board. However, the contract seller remains liable for all Assessments attributable to his Lot until fee title to the Lot is transferred.

4.3. VOTING. One vote is appurtenant to each Lot. The total number of votes equals the total number of Lots in the Property. Each vote is uniform and equal to the vote appurtenant to every other Lot, except during the Development Period as permitted in Appendix B. Votes may be cast by written proxy, according to the requirements of the Bylaws. Cumulative voting is not allowed. The vote appurtenant to a Lot is not divisible by Co-Owners, who are subject to the following provisions:

4.3.1. Co-Owners Voting at Meeting. If only one of the multiple Co-Owners of a Lot is present at a meeting of the Association, that person may cast the vote allocated to the Lot. If more than one of the Co-Owners is present, the Lot's one vote may be cast with the Co-Owners' unanimous agreement. Co-Owners are in unanimous agreement if one of the Co-Owners casts the vote and no other Co-Owner makes prompt protest to the person presiding over the meeting.

4.3.2. Co-Owners Voting by Proxy or Ballot. Any Co-Owner of a Lot may vote by ballot or proxy, and may register protest to the casting of a vote by ballot or proxy by the other Co-Owners. If the person presiding over the meeting or balloting receives evidence that the Co-Owners disagree on how the one appurtenant vote will be cast, the vote will not be counted.

4.4. BOOKS & RECORDS. The Association will maintain copies of the Documents and the Association's books, records, and financial statements. Books and records of the Association will be made available for inspection and copying pursuant to Article 1396-2.23.B. of the Texas Non-Profit Corporation Act, as it may be amended from time to time.

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

4.6. OBLIGATIONS OF OWNERS. Without limiting the obligations of Owners under the Documents, each Owner has the following obligations:

4.6.1. Information. Within thirty (30) days after acquiring an interest in a Lot; within thirty (30) days after the Owner has notice of a change in any information required

by this Subsection; and on request by the Association from time to time, an Owner will provide the Association with the following information:

- a. A copy of the recorded deed by which Owner has title to the Lot.
- b. The Owner's address, phone number, and driver's license number, if any.
- c. Any Mortgagee's name, address, and loan number.
- d. The name and phone number of any Resident other than the Owner.
- e. The name, address, and phone number of Owner's managing agent, if any.

4.6.2. Pay Assessments. Each Owner will pay Assessments properly levied by the Association against the Owner or his Lot, and will pay regular Assessments without demand by the Association.

4.6.3. Comply. Each Owner will comply with the Documents as amended from time to time.

4.6.4. Reimburse. Each Owner will pay for damage to the Property caused by the negligence or willful misconduct of the Owner, a Resident of the Owner's Lot, or the Owner or Resident's family, guests, employees, contractors, agents, or invitees.

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

ARTICLE 5

COVENANT FOR ASSESSMENTS

5.1. PURPOSE OF ASSESSMENTS. The Association will use Assessments for the general purposes of preserving and enhancing the Property, and promoting the recreation, common benefit, and enjoyment of Owners and Residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the Board's decision with respect to the use of Assessments is final.

5.2. PERSONAL OBLIGATION. An Owner is obligated to pay Assessments levied by the Board against the Owner or his Lot. An Owner makes payment to the Association at its

principal office or at any other place the Board directs. Payments must be made in full regardless of whether an Owner has a dispute with the Association, another Owner, or any other person or entity regarding any matter to which this Declaration pertains. No Owner may exempt himself from his Assessment liability by waiver of the use or enjoyment of the Common Area or by abandonment of his Lot. An Owner's obligation is not subject to offset by the Owner, nor is it contingent on the Association's performance of the Association's duties. Payment of Assessments is both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.

5.3. CONTROL FOR ASSESSMENT INCREASES. This Section of the Declaration may not be amended without the approval of Owners of at least sixty-seven percent (67%) of the Lots. In addition to other rights granted to Owners by this Declaration, Owners have the following powers and controls over the Association's budget:

5.3.1. Veto Increased Dues. At least thirty (30) days prior to the effective date of an increase in regular Assessments, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the increase. The increase will automatically become effective unless Owners of at least a majority of the Lots disapprove the increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

5.3.2. Veto Special Assessment. At least thirty (30) days prior to the effective date of a special Assessment, the Board will notify an Owner of each Lot of the amount of, the budgetary basis for, and the effective date of the special Assessment. The special Assessment will automatically become effective unless Owners of at least majority of the Lots disapprove the special Assessment by petition or at a meeting of the Association.

5.3.3. Approve Certain Special Assessments. The following actions must be funded by a special Assessment approved by Owners of at least a majority of the Lots:

a. Acquisition of real property, other than the purchase of a Lot at the sale foreclosing the Association's lien against the Lot.

b. Construction of additional improvements within the Property, but not replacement of original improvements.

c. Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

5.4. TYPES OF ASSESSMENTS. There are three (3) types of Assessments: Regular, Special, and Individual.

5.4.1. Regular Assessments. Regular Assessments are based on the annual budget. Each Lot is liable for its equal share of the annual budget. If the Board does not approve an

annual budget or fails to determine new regular Assessments for any year, or delays in doing so, Owners will continue to pay the regular Assessment as last determined. If during the course of a year the Board determines that regular Assessments are insufficient to cover the estimated common expenses for the remainder of the year, the Board may increase regular Assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular Assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- a. Maintenance, repair, and replacement, as necessary, of the Common Area.
- b. Maintenance, repair, and replacement, as necessary of the Area of Common Responsibility.
- c. Utilities billed to the Association.
- d. Services billed to the Association and serving all Lots.
- e. Taxes on Property owned by the Association, if any, and the Association's income taxes.
- f. Management, legal, accounting, auditing, and professional fees for services to the Association.
- g. Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- h. Insurance premiums and deductibles.
- i. Contributions to the reserve funds.
- j. Any other expense which the Association is required by law or the Documents to pay, or which in the opinion of the Board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Documents.

5.4.2. Special Assessments. In addition to regular Assessments, and subject to Subsection 5.3.3. above, the Board may levy one or more special Assessments against all Lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds.

5.4.3. Individual Assessments. In addition to regular and special Assessments, the Board may levy an individual Assessment against a Lot and its Owner. Individual Assessments may include, but are not limited to: insurance Assessment for Garden Home Lots when Owner elects to fall under blanket insurance policy covering Towhome Lots; an additional Assessment as set out in Paragraph 10.5 herein, interest, late charges, and

collection costs on delinquent Assessments; reimbursement for costs incurred in bringing an Owner or his Lot into compliance with the Documents; fines for violations of the Documents; insurance deductibles; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the Lots, which may be assessed according to benefit received; and "pass through" expenses for services to Lots provided through the Association and which are equitably paid by each Lot according to benefit received.

5.5. **BASIS & RATE OF ASSESSMENTS.** The share of liability for common expenses allocated to each Lot is uniform for all Lots, regardless of a Lot's location or the value and size of the Lot or Dwelling, but subject to lower rates of Assessment for vacant Lots. The rates of Assessment are as follows:

5.5.1. **Improved Lot.** A Lot that has been improved with a Dwelling for which the City of Tyler has issued or is able to issue a certificate of occupancy will at all times thereafter be assessed at the full rate.

5.5.2. **Vacant Lot.** A Lot that is vacant or on which a Dwelling is under construction is assessed at half of the full rate, unless the Lot is owned by Declarant. Such a Lot owned by Declarant is not subject to Assessment during the Declarant Control Period, provided Declarant, at its option, pays any operating deficits of the Association as they arise. A vacant Lot becomes subject to Assessment at the full rate on the first day of the month following the month in which the city issues a certificate of occupancy.

5.5.3. **Board Determination.** Notwithstanding the foregoing, the Board may revoke the reduced-rate status of a vacant Lot if it becomes necessary or desirable for the Association to spend money on or for the Lot, or if the Board determines that a completed Dwelling is eligible for a certificate of occupancy.

5.5.4. **Additional Amenities.** During the Declarant Control Period, additional amenities, including a pool, activity center, and trails, may be developed and constructed during subsequent phases. When said common amenities are completed, dues will automatically be increased for the additional expenses and reserve requirements for maintenance of same.

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

5.7. **DUE DATE.** Regular Assessments are due on the first day of each month, and are delinquent if not received by the Association on or before the first day of the month. Special and

individual Assessments are due on the date stated in the notice of Assessment or, if no date is stated, within ten (10) days after notice of the Assessment is given.

5.8. RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair. The Association will budget for reserves and use its best efforts to fund reserves out of regular Assessments, including using professional consultation as necessary.

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

5.8.2. Replacement & Repair Reserves. The Association will maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of the Common Area and Area of Common Responsibility and will utilize professional advise from an appropriate engineer regarding street repair and replacement.

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

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

5.10.1. Superiority of Assessment Lien. The Assessment lien is superior to all other liens and encumbrances on a Lot, except only for (1) real property taxes and Assessments levied by governmental and taxing authorities, (2) any interim construction lien, and (3) a first or senior purchase money vendor's lien or deed of trust lien recorded before the date on which the delinquent Assessment became due. The Assessment lien is superior to any mechanic's lien for construction of improvements to the Lot or an assignment of the right to insurance proceeds on the Lot, regardless of when recorded or perfected.

5.10.2. Effect of Mortgagee's Foreclosure. A Mortgagee's foreclosure of its deed of trust lien extinguishes the Association's claim against the Lot for unpaid Assessments that became due before the sale, but does not extinguish the Association's claim against the former Owner. The purchaser at the Mortgagee's foreclosure sale is liable for Assessments

coming due from and after the date of the sale, and for the Owner's pro rata share of the pre-foreclosure deficiency as a common expense.

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

5.10.4. Power of Sale. By accepting an interest in or title to a Lot, each Owner grants to the Association a private power of nonjudicial sale in connection with the Association's Assessment lien. The Board may appoint, from time to time, an Association officer, agent, trustee, substitute trustee, or attorney to exercise the power of sale on behalf of the Association. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a Board meeting.

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

ARTICLE 6

EFFECT OF NONPAYMENT OF ASSESSMENTS
AND VIOLATION OF THE DOCUMENTS

6.1. COLLECTING DELINQUENT ASSESSMENTS. Owners who honor their obligations to the Association should not be burdened by Owners who default. The Board is responsible for taking action to collect delinquent Assessments. Neither the Board nor the Association, however, is liable to an Owner or other person for its failure or inability to collect or attempt to collect an Assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

6.1.1. Delinquency. An Assessment is delinquent if the Association does not receive payment in full by the Assessment's due date.

6.1.2. Notice to Mortgagee. The Board may notify and communicate with the holder of any lien against a Lot regarding the Owner's default in payment of Assessments.

6.1.3. Interest. Delinquent Assessments are subject to interest from the due date until paid, at a rate to be determined by the Board from time to time, not to exceed the lesser of eighteen percent (18%) or the maximum permitted by law. If the Board fails to establish a rate, the rate is ten percent (10%) per annum. Interest is an individual Assessment.

6.1.4. Late Fees. Delinquent Assessments are subject to reasonable late fees, at a rate to be determined by the Board from time to time. Late fees are an individual Assessment.

6.1.5. Costs of Collection. The Owner of a Lot against which Assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent Assessments, including attorneys fees and processing fees charged by the manager. Collection costs are an individual Assessment.

6.1.6. Acceleration. If an Owner defaults in paying an Assessment that is payable in installments, the Board may accelerate the remaining installments on ten (10) days' written notice to the defaulting Owner. The entire unpaid balance of the Assessment becomes due on the date stated in the notice.

6.1.7. Suspension of Use and Vote. If an Owner's account has been delinquent for at least thirty (30) days, the Board may suspend the right of Owners and Residents to use Common Areas and common services during the period of delinquency. The Board may not suspend an Owner or Resident's right of access to the Lot. The Board may also suspend the right to vote appurtenant to the Lot. Suspension does not constitute a waiver or discharge of the Owner's obligation to pay Assessments.

6.1.8. Money Judgment. The Association may file suit seeking a money judgment against an Owner delinquent in the payment of Assessments, without foreclosing or waiving the Association lien for Assessments.

6.1.9. Foreclosure of Assessment Lien. As provided by Article 5 of this Declaration, the Association may foreclose its lien against the Lot by judicial or nonjudicial means.

6.1.10. Application of Payments. The Board may adopt and amend policies regarding the application of payments. The Board may refuse to accept partial payment, i.e., less than the full amount due and payable. The Board may also refuse to accept payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Board's policy may provide that endorsement and deposit of a payment does not constitute acceptance by the Association, and that acceptance occurs when the Association posts the payment to the Lot's account.

6.2. ENFORCING THE DOCUMENTS. The remedies provided in this Section for breach of the Documents are cumulative and not exclusive. In addition to other rights and remedies

provided by the Documents and by law, the Association has the following right to enforce the Documents:

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

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

6.2.3. Suspension. The Association may suspend the right of Owners and Residents to use Common Areas for any period during which the Owner or Resident, or the Owner or Resident's family, guests, employees, agents, or contractors violate the Documents. A suspension does not constitute a waiver or discharge of the Owner's obligations under the Documents.

6.2.4. Self-Help. The Association has the right to enter any part of the Property, including Lots, to abate or remove, using force as may reasonably be necessary, any erection, thing, animal, person, vehicle, or condition that violates the Documents. In exercising this right, the Board is not trespassing and is not liable for damages related to the abatement. The Board may levy its costs of abatement against the Lot and Owner as an individual Assessment. Unless an emergency situation exists in the good faith opinion of the Board, the Board will give the violating Owner fifteen (15) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, the Association may not alter or demolish an item of construction on a Lot without judicial proceedings.

6.2.5. No Waiver. The Association and every Owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Documents. Failure by the Association or by any Owner to enforce a provision of the Documents is not a waiver of the right to do so thereafter.

6.3. NOTICE AND HEARING. Before levying a fine for violation of the Documents (other than nonpayment of Assessments), or before levying an individual Assessment for property damage, the Association will give the Owner written notice of the levy and an opportunity to be heard. The Association's written notice must contain: (1) a description of the violation or property damage; (2) the amount of the proposed fine or damage charge; (3) a statement that not later than the thirtieth (30th) day after the date of the notice, the Owner may request a hearing before the Board to contest the fine or charge; and (4) a stated date by which the Owner may cure the violation to avoid the fine -- unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months. The Association may also give a copy of the notice to the Resident. Pending the hearing, the Association may continue to exercise its other

rights and remedies for the violation, as if the declared violation were valid. The Owner's request for a hearing suspends only the levy of a fine or damage charge. The Owner may attend the hearing in person, or may be represented by another person or written communication. The Board may adopt additional procedures and requirements for notices and hearing.

ARTICLE 7

PROPERTY EASEMENTS AND RIGHTS

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

7.2. OWNER'S EASEMENT OF ENJOYMENT. Every Owner is granted a right and easement of enjoyment and use over the Common Areas, subject to other rights and easements contained in the Documents.

7.3. OWNER'S MAINTENANCE EASEMENT. Every Owner is granted an easement over adjoining Lots and Common Areas for the maintenance or reconstruction of his Dwelling, subject to the consent of the Owner of the adjoining Lot, or the Association in the case of Common Areas, and provided the easement does not damage or materially interfere with the use of the adjoining Lot or Common Area. Requests for entry to an adjoining Lot or Common Area will be made in advance for a time reasonably convenient for the adjoining Owner, who may not unreasonably withhold consent. If an Owner damages an adjoining Lot or Common Area in exercising this easement, the Owner is obligated to restore the damaged property to its original condition, at his expense, within a reasonable period of time.

7.4. OWNER'S INGRESS & EGRESS EASEMENT. Every Owner is granted a perpetual easement over the Property, as may be reasonably required, for ingress to and egress from his Lot.

7.5. ASSOCIATION'S ACCESS EASEMENT. The Association is granted an easement of access and entry to every Lot and Common Area to perform maintenance, to enforce architectural and use restrictions, to respond to emergencies, and to perform any other duties required by the Documents.

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

7.7. ENCROACHMENT EASEMENT. If any portion of a Dwelling encroaches upon any Common Area or upon an adjoining Lot now existing or which may come into existence hereafter as a result of construction, overhangs, brick ledges, repair, shifting, settlement, or movement of any portion of a Dwelling, or as a result of condemnation or eminent domain proceedings, a valid easement for such encroachment shall exist and such encroachment shall remain undisturbed so long as the Dwelling stands.

READERS, PLEASE PAY PARTICULAR HEED TO
THE NEXT PROVISION TITLED "SECURITY"

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

ARTICLE 8

LAND AND WATER RIGHTS

8.1. OWNERSHIP OF WATER RESOURCES. Certain portions of the Property may be designated as storm water retention or retention ponds and are herein referred to as "Water Resources".

8.2. MAINTENANCE OF WATER RESOURCES EMBANKMENTS AND WATER RESOURCES BOTTOMS. The Association shall be responsible for and obligated to monitor, police, maintain, and control the water level and quality of the Water Resources and shall maintain all Water Resources. The Association 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 Water Resources, 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 Water Resources ("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 Association 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 Lot Assessment against the Owner and his Lot as provided in Article 5.

8.3. IMPROVEMENTS ON WATER RESOURCES. In the event that Declarant, any entity designated by the Declarant, or the Association shall construct any bridges, docks, or other improvements which may extend over or into the Water Resources or construct any bulkheads or similar improvements to support or enhance the Water Resources, the Association shall maintain any and all improvements in good repair and condition. No Owner, except the Declarant, its designee or the Association, shall be permitted to construct any dock, or any other improvement, permanent or temporary, on, over, or under any Water Resources without the written consent of the ACC, which consent may be withheld for any reason.

8.4. EASEMENTS. The Owners' use and access to the Water Resources shall be subject to and limited by the Rules and regulations of the Association. The use of Water Resources shall be limited to such uses as the Association 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 Water Resources and a parcel of land extending fifteen feet (15') from the water edge for the purpose of providing the maintenance required herein and the Adjacent Owners are hereby granted a nonexclusive easement over the Water Resources for the purpose of providing any maintenance to the embankment.

8.5. WATER RESOURCES USE RESTRICTIONS AND COVENANTS. In connection with the use of any Water Resources, the following restrictions shall apply:

8.5.1. Motorized or Powerboats. No motorized or powerboats shall be permitted on any Water Resources with the exception of boats used for maintenance thereof;

8.5.2. Trash. No bottles, trash, cans, or garbage of any kind or description shall be placed in any Water Resources;

8.5.3. Annoying Activity. No activity shall be permitted on any Water Resources which may become an annoyance or nuisance to the adjacent property and the Owners thereof. The Association's determination whether any activity constitutes an annoyance or nuisance shall be dispositive;

8.5.4. Water Resources Irrigating. No person or entity, except Declarant or the Association, shall have the right to pump or otherwise remove any water from any Water Resources for the purpose of irrigation or other use;

8.5.5. Water Resources Fishing. Only Owners and guests shall be permitted to fish in the Water Resources and only in areas so designated and only in accordance with governmental regulations;

8.5.6. Use of Pesticides and Chemicals. The use of any pesticides that may drain into the Water Resources shall be prior approved by the Board of Directors. In addition, it is recommended that the use of chemical fertilizers be limited and natural organic fertilizers be encouraged; however, the Board of Directors has the power to specifically dictate which fertilizers and pesticides may be used.

8.5.7. Board to Govern Water Resources. The Board of Directors of the Association shall be entitled to establish, amend, or modify Rules and regulations governing the use of the Water Resources.

8.6. INDEMNIFICATION. In connection with the platting of the Property or obtaining permits necessary to develop the Property, the Declarant may assume or may be required to assume certain obligations for the maintenance of the Water Resources, Common Property 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 Water Resources, Common Property or the Common Roads, or parts thereof, within the Property or Additional Property. Association further agrees that subsequent to the recording of this Declaration, it shall indemnify and hold Declarant harmless from suits, 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 occurrence, in, upon, at, or from the maintenance of the Water Resources, Common Property 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, its successors, assigns, agents, or invitees.

ARTICE 9

ARCHITECTURAL COVENANTS AND CONTROL

9.1. PURPOSE. Because the Lots are part of a single, unified community, the Association has the right to regulate the design, use, and appearance of the Lots and Common Areas in order to preserve and enhance the Property's value and architectural harmony. The purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed.

THE CONSTRUCTION, MODIFICATION, REPLACEMENT, USE, AND APPEARANCE OF EVERY LOT & DWELLING IS SUBJECT TO THIS DECLARATION, ACC APPROVAL, AND RULES & ARCHITECTURAL RESTRICTIONS ADOPTED BY THE ASSOCIATION.

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

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

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

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

9.4.2. Prior Approval. Notwithstanding the foregoing, no permission or approval is required for work that strictly complies with guidelines, plans, specifications, or policies previously developed and approved for all Lots by the ACC and still in effect at the time work is initiated. Written approval for specified improvements or alterations on certain Lots does not constitute approval for all Lots.

9.4.3. No Approval Required. No approval is required to repaint exteriors or exterior trim in accordance with an ACC-approved color scheme, or to rebuild a Dwelling

in accordance with originally approved plans and specifications. Nor is approval required for an Owner to remodel or repaint the interior of a Dwelling.

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

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

ARTICLE 10

CONSTRUCTION RESTRICTIONS

10.1. SUBJECT TO ACC RESTRICTIONS. In addition to the restrictions contained in this Article and the following Article, each Lot is subject to any architectural restrictions developed by the ACC and published by the Association. The provisions of this Article may be treated as the minimum requirements for improving a Lot. The ACC may promulgate additional restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article, provided they conform to the original scheme of development and design. An Owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his Lot and Dwelling.

BEFORE MAKING ANY IMPROVEMENT OR ALTERATION TO A LOT OR DWELLING, AN OWNER SHOULD CONTACT THE ASSOCIATION FOR THE MOST RECENT ARCHITECTURAL RESTRICTIONS.

10.2. HOUSES. The principle improvement on a Lot must be one single family Dwelling. Without the ACC's prior written approval for a variance, each Dwelling must have the following characteristics:

10.2.1. Setbacks. Setbacks on Garden Home Lots are twenty feet (20'), ten feet (10') rear, and five feet (5') side. Townhome Lots do not have setbacks.

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

10.2.3. Garage. A Dwelling must have an attached front garage for at least one (1) standard-size car, unless otherwise required by the City of Tyler.

10.2.4. Size. The total air-conditioned living area of the Dwelling, as measured to the outside of exterior walls, but exclusive of open porches, garages, patios, and detached accessory buildings, shall be approximately nine hundred (900) square feet or the minimum habitable floor area required by the City of Tyler, whichever is greater. The ACC may establish a maximum size for Dwelling.

10.2.5. Exterior Wall Materials. The Dwelling's total exterior wall area, minus windows and doors, must be masonry, such as brick veneer.

10.2.6. Roofing Materials. Roofs must be covered with composition shingle. The ACC may permit other materials.

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

10.2.8. Mailboxes. Each Lot has a mail box located in front of the Dwelling.

10.3. DRIVEWAYS. Without the ACC's prior written approval: (1) a driveway on a Lot must be surfaced with concrete; (2) side approach driveways are not allowed on any Lot.

10.4. FENCES & WALLS. This Section is subject to the ACC's right to adopt specifications for construction or reconstruction of fences. Fences may not exceed 8 feet in height without ACC approval. Fences must be made of masonry, wood, or other ACC-approved material. Retaining walls must be constructed entirely with ACC-approved materials, and railroad ties may not be used on the Property. Fences may not be constructed between a Dwelling's front building line and the street and any flower beds will have brick borders.

10.5. UTILITIES. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the City of Tyler; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The ACC may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring Lots. Each Lot

will use city water and sewage systems. Individual water supply and sewage disposal systems are not permitted.

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

10.7. NO SUBDIVISION. No Lot may be subdivided without consent of the Home Owners Association.

10.8. DEBRIS. No Lot or other part of the Property may be used as a dumping ground. Waste materials incident to construction or repair of improvements on a Lot may be stored temporarily on the Lot during construction while work progresses.

ARTICLE 11

USE RESTRICTIONS

11.1. ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its Board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each Lot is owned and occupied subject to the right of the Board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of Common Areas.
- b. Hazardous, illegal, or annoying materials or activities on the Property.
- c. The use of Property-wide services provided through the Association.
- d. The consumption of utilities billed to the Association.
- e. The use, maintenance, and appearance of portions of Dwellings that are visible from the street or other Dwellings, such as roofs, windows, doors, porches, and fences.
- f. Landscaping and maintenance of yards.
- g. The occupancy and leasing of Dwellings.
- h. The types, sizes, numbers, locations, and behavior of animals at the Property.

i. The types, sizes, numbers, conditions, uses, appearances, and locations of motorized and recreational vehicles on the Property.

j. Disposition of trash and control of vermin, termites, and pests.

k. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for Residents.

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

11.3. OCCUPANCY. Other than the completed principle Dwelling, no thing or structure on a Lot (including the garage) may be occupied as a residence at any time by any person.

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

11.5. ADDITIONAL ASSESSMENT. In the event an Owner leases his Dwelling to one other than a relative (either by blood or marriage or previous marriage), the Owner shall be assessed an Additional Assessment of One Hundred Dollars (\$100.00) per month to cover the additional expenses of management associated with a rental project as opposed to Owner occupancy. A Mortgagee who acquires a Dwelling through foreclosure or through a deed in lieu of foreclosure is exempt from this provision.

11.6. ANNOYANCE. No Lot or Common Area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of Residents; (4) may result in the cancellation of insurance on the Property; or (5) will violate any law. The Board has the sole authority to determine what constitutes an annoyance.

11.7. ANIMALS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for a commercial purpose or for food. Customary domesticated household pets may be kept subject to the Rules. Unless the Rules provide otherwise:

11.7.1. Number. No more than four (4) pets may be maintained in each Dwelling. Of the four (4) pets, no more than two (2) may be cats or dogs. Permission to maintain other types or additional numbers of household pets must be obtained in writing from the Board.

11.7.2. Disturbance. Pets must be kept in a manner that does not disturb the peaceful enjoyment of Residents of other Lots. No pet may be permitted to bark, howl, whine, screech, or make other loud noises for extended or repeated periods of time.

11.7.3. Indoors/Outdoors. Subject to the limited yard privilege below, a permitted pet must be maintained inside the Dwelling, and may not be kept on a patio or in a fenced yard. No pet is allowed on the Common Area unless carried or leashed.

11.7.4. Limited Yard Privilege. Dogs must be attended and kept on a leash in the Common Area and may not disturb or annoy people on the Property. The Board is the sole arbiter of what constitutes a disturbance or annoyance. If the Board determines that a dog disturbs people, the Board may permanently revoke the privilege of allowing the dog in the Common Area. Thereafter, the dog must be maintained inside the Dwelling.

11.7.5. Pooper Scooper. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a Resident must prevent his pet from relieving itself on the Common Area, the Area of Common Responsibility, or the Lot of another Owner.

11.7.6. Liability. An Owner is responsible for any property damage, injury, or disturbance caused or inflicted by an animal kept on the Lot. The Owner must compensate any person injured by the animal. The Owner of a Lot on which an animal is kept is deemed to indemnify and to hold harmless the Board, the Association, and other Owners and Residents, from any loss, claim, or liability resulting from any action of the animal or arising by reason of keeping the animal on the Property.

11.8. APPEARANCE. Both the Lot and the Dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring Lots. The ACC is the arbitrator of acceptable appearance standards.

11.9. WINDOW TREATMENTS. Without the ACC's prior written approval, all window treatments within the Dwelling that are visible from the street or another Dwelling must appear to be white in color.

11.10. SIGNS. No signs advertising the Lots for sale or lease, other advertising signs, or unsightly objects may be erected, placed, or permitted to remain on the Property or to be visible from windows in the Dwelling without the Board's prior written approval from the ACC. ACC approval may specify the location, nature, appearance, dimensions, number, and time period of any advertising sign. The Association may effect the removal of any sign that violates this Section without liability for trespass or any other liability connected with the removal. Signs required by legal proceedings are exempted. Notwithstanding the foregoing, and subject to ACC disapproval, an Owner may erect, per Lot, one professionally made sign of not more than five (5) square feet advertising the Lot for sale.

11.11. GARAGES. Without the Board's prior written approval, the original garage area of a Lot may not be enclosed or used for any purpose which prohibits the parking of operable vehicles therein. All mechanical and operational aspects of the garage door are to be maintained by its Owner.

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

11.13. ANTENNA. Without the ACC's prior written approval, the following items are prohibited if visible from the street or from another Lot or Dwelling: exterior or roof-mounted antenna, microwave dish, satellite dish, receiving or transmitting tower, and other equipment for sending or receiving audio or video messages.

11.14. TEMPORARY STRUCTURES. Improvements or structures of a temporary or mobile nature, such as sheds and mobile homes, may not be placed on a Lot if visible from a street or another Lot. However, the ACC may authorize an Owner or owner's contractor to maintain a temporary structure (such as a portable toilet or construction trailer) on the Lot during construction of the Dwelling.

11.15. NOISE & ODOR. A Resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy Residents of neighboring Lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

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

11.17. VEHICLES. All vehicles on the Property, whether owned or operated by the Residents or their families and guests, are subject to this Section and Rules adopted by the Board. No truck with tonnage over three quarters (3/4) of a ton, vehicle with advertising signage, mobile home, motor home, camper, bus, trailer, boat, aircraft, inoperable vehicle, or any other similar vehicle or any vehicular equipment, mobile or otherwise, which the Board deems to be a nuisance, unsightly, or inappropriate may be kept, parked, or stored anywhere on the Property without Board approval. The foregoing restriction does not apply to vehicles and equipment temporarily on the

Property in connection with the construction or maintenance of a Dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Owner or operator of the vehicle.

11.18. LANDSCAPING. No person may perform landscaping, planting, or gardening on the Common Area or Areas of Common Responsibility, without the Board's prior written authorization.

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

11.20. MANAGEMENT. The Property is to be well maintained in a manner similar to high quality developments of a similar nature in the North Texas area; therefore, **maintenance and document enforcement will be handled by a professional management company hired by the Association.**

ARTICLE 12

AGE REQUIREMENTS

12.1. AGE REQUIREMENTS. Because the Property is intended as a retirement community, to live in HOLLYCREEK VILLAGE, an individual must be at least fifty (50) years of age; provided, however, for married couples, only one (1) spouse must have attained the age of fifty (50) years. Children under the age of twenty-five (25) years may not permanently live with a parent or parents who have attained the age of fifty (50) years unless the child is the primary care provider for the parent(s). Notwithstanding the foregoing, the foregoing is not intended to prevent temporary visits from children, relatives, or friends who are under fifty (50) years of age, provided such visits are for periods not to exceed two (2) consecutive weeks. Upon prior request, the Association may grant variances to the length of time that temporary visits may last. These age requirements do not apply to the staff of HOLLYCREEK VILLAGE and their families who reside on site. These age requirements will not apply in the event of a conflict with the Federal Fair Housing Laws regarding discrimination because of race, color, religion, sex, handicap, or national origin.

ARTICLE 13

MORTGAGEE PROTECTION

13.1. INTRODUCTION. This Article establishes certain standards for the benefit of Mortgagees, and is written to comply with Chapter VI of Fannie Mae's Selling Guide in effect at the time of drafting. If a Mortgagee requests from the Association compliance with the guidelines of an Underwriting Lender, the Board, without approval of Owners or Mortgagees, may amend this

Article and other provisions of the Documents, as necessary, to meet the requirements of the Underwriting Lender. This Article is supplemental to, not a substitution for, any other provision of the Documents. In case of conflict, this Article controls.

13.2. KNOWN MORTGAGEES. An Owner who mortgages his Lot will notify the Association, giving the complete name and address of his Mortgagee and the loan number. An Owner will also provide that information on request by the Association from time to time. The Association's obligations to Mortgagees under the Documents extend only to those Mortgagees known to the Association. All actions and approvals required by Mortgagees will be conclusively satisfied by the Mortgagees known to the Association, without regard to other holders of mortgages on Lots. The Association may rely on the information provided by Owners and Mortgagees.

13.3. ELIGIBLE MORTGAGEES. "Eligible Mortgagee" means a Mortgagee that submits to the Association a written notice containing its name and address, the loan number, the identifying number and street address of the mortgaged Lot, and the types of actions for which the Eligible Mortgagee requests timely notice. A single notice per Lot will be valid so long as the Eligible Mortgagee holds a mortgage on the Lot. The Board will maintain this information. A representative of an Eligible Mortgagee may attend and address any meeting that an Owner may attend.

13.4. MORTGAGEE RIGHTS.

13.4.1. Termination. An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by at least fifty-one percent (51%) of Eligible Mortgagees, in addition to the required consents of Owners. An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least sixty-seven percent (67%) of Eligible Mortgagees. The approval of an Eligible Mortgagee is implied when the Eligible Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

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

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

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

13.5. INSURANCE POLICIES. If an Underwriting Lender is a Mortgagee or an Owner, the Association will comply with this Section in addition to the other insurance requirements of this Declaration. The following provisions are derived from Chapter 7, Part VI, Fannie Mae's Selling Guide, revised May 12, 1993:

13.5.1. Named Insured. The Association's insurance policies covering the Common Areas must name the Association as the named insured.

13.5.2. Notice of Cancellation. Insurance policies maintained by the Association should require the insurer to notify in writing each Mortgagee named in the mortgage clause at least ten (10) days before the insurer cancels or substantially changes the Association's coverage. Additionally, the Association will use its best efforts to send timely written notice to Eligible Mortgagees of a lapse, cancellation, or material modification of any insurance policy maintained by the Association.

13.5.3. Insurance Carrier. The Association's hazard insurance policy must be written by an insurance carrier that meets or exceeds the requirements, from time to time, of an Underwriting Lender.

13.5.4. Policy Deductible. The deductible on the Association's hazard insurance policy must not exceed the maximum limits permitted by an Underwriting Lender. Funds to cover the deductible should be included in the Association's operating reserve account.

13.5.5. Full Replacement Cost. The Association's hazard insurance policy should cover one hundred percent (100%) of the insurable replacement cost of the insurable improvements, if required by an Underwriting Lender.

13.5.6. Endorsements. The Association will obtain endorsements to its hazard insurance policy as required by an Underwriting Lender.

13.5.7. Liability Coverage. The amount of the Association's liability insurance should be at least that required by an Underwriting Lender.

ARTICLE 14

AMENDMENTS

14.1. CONSENTS REQUIRED. Except as otherwise provided by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the Board alone.

14.2. METHOD OF AMENDMENT. This Declaration may be amended by any method selected by the Board from time to time, pursuant to the Bylaws, provided the method gives an Owner of each Lot the substance if not exact wording of the proposed amendment, a description in

layman's terms of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

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

14.4. DECLARANT PROVISIONS. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Because Appendix B of this Declaration is destined to become obsolete, beginning twenty (20) years after the date this Declaration is first recorded, the Board may restate, rerecord, or publish this Declaration without Appendix B, provided any other appendix is not relettered. The automatic expiration and subsequent deletion of Appendix B does not constitute an amendment of this Declaration. This Section may not be amended without Declarant's written and acknowledged consent.

14.5. AGENCY COMPLIANCE. Appendix B notwithstanding, as long as Declarant owns any Lot on the Property, Declarant may amend this Declaration without the consent of any other Lot Owner in order to comply with the requirements and provisions of the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal Housing Authority (FHA) or the Veterans Administration (VA).

ARTICLE 15

INSURANCE

15.1. GENERAL PROVISIONS. All insurance affecting the Property is governed by the provisions of this Article, with which the Board will make every reasonable effort to comply:

15.1.1. Common Expense. The cost of insurance coverages and bonds maintained by the Association for the Townhome Dwellings is a common expense.

15.1.2. Insurer. Insurance policies and bonds obtained and maintained by the Association must be issued by responsible insurance companies authorized to do business in the State of Texas.

15.1.3. Insured. The Association must be the named insured on all policies obtained by the Association.

15.1.4. Association as Trustee. Each Owner irrevocably appoints the Association, acting through its Board, as his trustee to negotiate, receive, administer, and distribute the proceeds of any claim against an insurance policy maintained by the Association.

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

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

15.1.7. Mortgage Clause. The Association's policies should contain the standard mortgage clause naming either the Mortgagee or its servicer followed by "its successors and assigns."

15.2. CASUALTY OR HAZARD. The Association will obtain blanket all-risk insurance, if reasonably available, for all Townhome Dwellings and Common Area improvements insurable by the Association. If blanket all-risk insurance is not reasonably available, then at a minimum, the Association will obtain an insurance policy providing fire and extended coverage. This insurance must be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in event of damage or destruction from any insured hazard, excluding land, foundations, and excavations.

15.2.1. Common Area Insured. The Association will insure Common Areas, including personal property owned by the Association, such as records, furniture, fixtures, equipment, and supplies. Also, the Association will insure any Lot owned by the Association.

15.2.2. Endorsements. To the extent reasonably available, the Association will obtain endorsements to its hazard insurance policy as required by the "Endorsements" paragraph of the Mortgage Protection article of this Declaration.

15.2.3. Dwellings Insured. The Association will provide a blanket insurance policy for fire and extended coverage insurance for all Townhome Dwellings and, if possible will make such blanket insurance coverage available to Garden Home Dwelling Owners at their option. Premiums for Garden Home Dwellings will be paid in accordance with Paragraph 5.4.3.

15.3. GENERAL LIABILITY. The Association will maintain a commercial general liability insurance policy over the Common Areas -- expressly excluding the liability of each Owner and Resident within his Lot -- for bodily injury and property damage resulting from the operation, maintenance, or use of the Common Areas. If the policy does not contain a severability of interest provision, it should contain an endorsement to preclude the insurer's denial of an Owner's claim because of negligent acts of the Association or other Owners. If available, the Association may obtain liability insurance over the Area of Common Responsibility for bodily injury and property damage resulting from the maintenance of the Area of Common Responsibility.

15.4. DIRECTORS & OFFICERS LIABILITY. To the extent it is reasonably available, the Association will maintain Directors and officers liability insurance, errors and omissions insurance, indemnity bonds, or other insurance the Board deems advisable to insure the Association's Directors, officers, committee Members, and managers against liability for an act or omission in carrying out their duties in those capacities.

15.5. OTHER COVERAGES. The Association may maintain any insurance policies and bonds deemed by the Board to be necessary or desirable for the benefit of the Association, including but not limited to the following:

15.5.1. Worker's Compensation. The Association may maintain worker's compensation insurance if and to the extent necessary to meet the requirements of State law or if the Board so chooses.

15.5.2. Fidelity Coverage. The Association may maintain blanket fidelity coverage for any person who handles or is responsible for funds held or administered by the Association, whether or not the person is paid for his services. The policy should be for an amount that exceeds the greater of (1) the estimated maximum funds, including reserve funds, that will be in the Association's custody at any time the policy is in force; or (2) an amount equal to three (3) months of regular Assessments on all Lots. A management agent that handles Association funds should be covered for its own fidelity insurance policy with the same coverages.

15.5.3. Garden Home Owners. Each Garden Home Owner not covered under the Association blanket insurance policy must submit a copy of the insurance policy covering his Dwelling. In the event the Garden Home Owner does not provide such proof of insurance, the Association may obtain coverage on such Dwelling and assess the Owner for the premium cost.

15.5.4. Mortgagee Required Policies. Unless coverage is not available or has been waived in writing, the Association will maintain any insurance and bond required by an Underwriting Lender for planned unit developments as long as an Underwriting Lender is a Mortgagee or an Owner.

ARE YOU COVERED?

The Association does NOT insure the contents of Dwellings. The Association strongly urges each Owner and Resident to adequately insure such property. The policies maintained by the Association are NOT for the benefit of individual Owners and Residents.

ARTICLE 16

RECONSTRUCTION CONDEMNATION & TERMINATION

16.1. ASSOCIATION AS TRUSTEE. By accepting an interest in or title to a Lot, each Owner appoints the Association, acting through its Board, as trustee to deal with the Property in the event of damage, destruction, obsolescence, condemnation, or termination of all or a substantial part of the Property. As trustee, the Association has full and complete authority, right, and power to do all things reasonable and necessary to effect the provisions of this Declaration, including,

without limitation, the right to receive, administer, and distribute funds, awards, and insurance proceeds; to effect the sale of the Property as permitted by this Declaration; and to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner.

16.2. RESTORATION AFTER DAMAGE.

16.2.1. Common Area. The Association will promptly repair or restore any damaged or destroyed portion of the Property which the Association owns or is obligated to insure. Common Areas will be repaired and restored substantially as they existed immediately prior to the damage or destruction, unless alternate plans and specifications are approved by Owners of at least a majority of the Lots. If insurance proceeds or condemnation awards are not sufficient to restore the damaged Property, the Board may levy a special Assessment to fund the deficiency.

16.2.2. Dwellings. The Association is responsible for the repair or reconstruction of each Dwelling and Lot.

16.2.3. Insurance Deductibles. If repair or restoration of Common Areas is required as a result of an insured loss, the Board may levy an individual Assessment, in the amount of the insurance deductible, against the Owner or Owners who would be responsible for the repair in the absence of insurance.

16.3. CONDEMNATION. If any part of the Property is condemned, the Board may execute an amendment of this Declaration to describe the altered parameters of the Property. If the Association replaces or restores Common Areas taken by condemnation by obtaining other land or constructing additional improvements, the Board may execute an amendment without the prior consent of Owners to describe the altered parameters of the Property and any corresponding change of facilities or improvements.

16.4. TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions:

16.4.1. Substantial Taking. In the event of substantially total damage, destruction, or condemnation of the Property, an amendment to terminate must be approved by Owners of at least sixty-seven percent (67%) of the Lots and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

16.4.2. Total Taking. In the event of condemnation of the entire Property, an amendment to terminate may be executed by the Board without a vote of Owners or Mortgagees.

16.4.3. Other Circumstances. In all other circumstances, an amendment to terminate must be approved by Owners of at least eighty percent (80%) of the Lots and by certain Mortgagees pursuant to the Mortgagee Protection article of this Declaration.

ARTICLE 17

GENERAL PROVISIONS

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

17.2. FAIR HOUSING COMPLIANCE. The Association affirmatively desires and intends to comply with the spirit and letter of fair housing laws and ordinances. The provisions of this Declaration and the Rules promulgated by the Board may not be used to discriminate against any class of people protected by fair housing laws and ordinances.

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

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

17.5. 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.

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

17.7. 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.

17.8. PREPARER. This Declaration was prepared in the law office of Martin C. Cude, Jr., P.C., 4415 Normandy Avenue, Dallas, Texas 75205-2043.

SIGNED AND ACKNOWLEDGED

SIGNED this 13th day of October, 1999.

NORTHSTAR REALTY, LTD.
A Texas Limited Partnership

By: HALL-DIETZ VENTURE NO. 2, a Texas joint venture,
appointed developer agent

By: BAKER REALTY GROUP, INC.
its authorized joint venturer

By: Perry B. Hall
Perry B. Hall, Executive Vice President

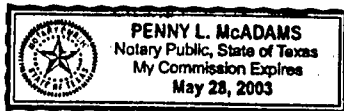
THE STATE OF TEXAS

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COUNTY OF SMITH

BEFORE ME, the undersigned authority, on this day personally appeared PERRY B. HALL, Executive Vice President, of BAKER REALTY GROUP, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as an act of such corporation in its capacity as its authorized joint venturer, an authorized joint venturer of HALL-DIETZ VENTURE NO. 2, in its capacity as appointed development agent for NORTHSTAR REALTY, LTD.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of October, 1999.



Penny L. McAdams
Notary Public in and for
The State of Texas

Penny L. McAdams
Notary's Name: Typed or Printed

My Commission Expires:

05/28/03

APPENDIX A

LEGAL DESCRIPTION OF THE PROPERTY

HOLLYCREEK VILLAGE

All of the lots in HOLLYCREEK VILLAGE, a subdivision in Smith County, Texas, according to the map of plat thereof, recorded in the office of the County, Clerk of Smith County, Texas recorded in Cabinet C, Slide 166-D of the Plat Records in Smith County, being further described by Lots, as follows:

Lots P1 through P35, Block 2, both inclusive; Lots 1 through 80, Block 1, both inclusive; Lot S1 and Lots C1 through C4, both inclusive, and the area designated on the plat as "Future Development".

APPENDIX B

DECLARANT REPRESENTATIONS & RESERVATIONS

HOLLYCREEK VILLAGE

B.1 DECLARANT'S REPRESENTATIONS. Declarant makes the following representations regarding certain characteristics of the Property.

B.1.1. New Construction. The Property is newly constructed. None of the improvements in the Property constitute conversion of existing buildings.

B.1.2. No Leasehold. No part of the Property is on leasehold land.

B.1.3. Representations of Size. The sizes or dimensions of living areas, Dwellings, and Lots shown on promotional materials used by Declarant during the marketing of the Property are approximated estimates based on preconstruction drawings of representational floor plans. Declarant does not warrant or represent that an Owner's Lot or Dwelling actually contain the sizes or dimensions shown on promotional materials.

B.2. DECLARANT CONTROL PERIOD. For the benefit and protection of Owners and Mortgagees, and for the purpose of ensuring a complete and orderly buildout and sellout of the Property, Declarant may retain control of the Association, subject to the following:

B.2.1. Duration. The duration of the Declarant Control Period will be from the date this declaration is recorded for a maximum period not to exceed the earlier of:

B.2.1.1. Ten (10) years from date this declaration is recorded.

B.2.1.2. Four months after title to 75 percent of the Lots which may be created has been conveyed to Owners other than builders or persons who purchase Lots for the purpose of constructing Dwellings for resale to Owners, including subsequent phases. When subsequent phases are added, the percentage of Lots owned by Declarant will increase proportionately.

B.2.1.3. When, in Declarant's sole opinion, the Association is viable, self-supporting, and operational.

B.2.2. Powers. During the Declarant Control Period, Declarant may, without approval of the Members: (1) appoint, remove, and replace any officer or Director of the Association, none of whom need be Members or Owners; and (2) designate, from time to time, the Area of Common Responsibility, if any.

B.2.3. Organizational Meeting. Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call an organizational meeting of the Members of the Association for the purpose of electing, by vote of the Owners, Directors to the Board.

B.2.4. No Advantage. Declarant may not use its control for an advantage over the Owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate with cause with 30 days' notice, or without cause with 90 days' notice.

B.3. DECLARANT VOTES. During the Development Period, the vote appurtenant to each Lot owned by Declarant is weighted 3 times that of the vote appurtenant to a Lot owned by another Owner. In other words, during the Development Period, Declarant may cast the equivalent of 3 votes for each Lot owned by Declarant on any issue before the Association. On termination of the Development Period and thereafter, the vote appurtenant to Declarant's Lots is weighted uniformly with all other votes.

B.4. DEVELOPMENT PERIOD RIGHTS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

B.4.1. The right to appoint and remove Members of the ACC.

B.4.2. The right to amend this Declaration and the other Documents, without consent of other Owners or any Mortgagee, for the following limited purposes:

B.4.2.1. To add real property to the Property.

B.4.2.2. To withdraw and release real property from the Property if deemed unsuitable for development.

B.4.2.3. To create Lots and Common Areas within the Property.

B.4.2.4. To subdivide Lots or convert Lots into Common Areas.

B.4.2.5. To comply with requirements of an Underwriting Lender.

B.4.2.6. To resolve conflicts, clarify ambiguities, and to correct inadvertent misstatements, errors, or omissions in the Documents.

B.4.3. The right to erect, construct, and maintain on and in the Common Areas and Lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, and marketing of the Property.

B.4.4. The right to install, maintain, replace, relocate, and remove signs, banners, flags, display lighting, and seasonal landscaping on the Property for purposes of promoting, identifying, and marketing the Property.

B.4.5. The right of ingress and egress in and through the Property to construct, maintain, manage, and market the Property, and to discharge Declarant's obligations under this Declaration.

B.4.6. The right of entry and access to all Lots to perform warranty-related work, if any, for the benefit of the Lot being entered, adjoining Lots, or Common Areas. Requests for entry must be made in advance for a time reasonably convenient for the Owner who may not unreasonably withhold consent.

B.4.7. The right to complete or make improvements indicated on the Plat.

B.4.8. The right to use Lots owned or leased by Declarant as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property.

B.4.9. The right to merge the Association with another residential property Owners Association.

B.4.10. The absolute right to exercise any of the foregoing rights without the prior approval of the ACC, the Board, or the Owners.

B.5. WORKING CAPITAL FUND. Declarant may establish a working capital fund for the Association by collecting contributions from purchasers when the sale of a Lot closes. Contributions to the fund are not advance payments of regular Assessments and are not refundable. If Declarant establishes the fund, Declarant will transfer it to the Association by the end of the Declarant Control Period. Declarant may not use the fund to defray Declarant's expenses or construction costs, or to cover the Association's budget deficits during the Declarant Control Period.

B.6. GENERAL RESERVATION. Notwithstanding other provisions of the Documents to the contrary, nothing contained therein may be construed to, nor may any Mortgagee, other Owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself, its agents, employees, and contractors.

B.7. EXPENSES OF DECLARANT. Expenses related to the completion and marketing of the Property will be paid by Declarant and are not common expenses of the Association.

B.8. OBLIGATION FOR ASSESSMENTS. Until the Association levies an Assessment against the Lots, Declarant will pay all the expenses of the Property and the Association as they accrue. From the date of the initial Assessment until the end of the Declarant Control Period, Declarant will pay either (1) the rate of Assessment for non-Declarant Owners on each Lot owned by Declarant, or (2) the operational expenses of the Association minus the operational expense portion of the Assessments paid by Owners other than Declarant.

SIGNED this 13th day of October, 1999.

NORTHSTAR REALTY, LTD.

A Texas Limited Partnership

By: HALL-DIETZ VENTURE NO. 2, a Texas joint venture,
appointed developer agent

By: BAKER REALTY GROUP, INC.
its authorized joint venturer

By: Perry B. Hall
Perry B. Hall, Executive Vice President

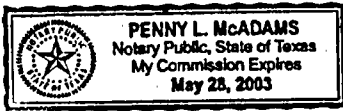
THE STATE OF TEXAS

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COUNTY OF SMITH

BEFORE ME, the undersigned authority, on this day personally appeared PERRY B. HALL, Executive Vice President, of BAKER REALTY GROUP, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as an act of such corporation in its capacity as its authorized joint venturer, an authorized joint venturer of HALL-DIETZ VENTURE NO. 2, in its capacity as appointed development agent for NORTHSTAR REALTY, LTD.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 13th day of October, 1999.



Penny L. McAdams
Notary Public in and for
The State of Texas

Penny L. McAdams
Notary's Name: Typed or Printed

My Commission Expires:
05/28/03

AFTER RECORDING, PLEASE RETURN TO:

Perry Hall
Two American Center
821 ESE Loop 323, Suite 310
Tyler, Texas 75701

STATE OF TEXAS COUNTY OF SMITH
I hereby certify that this instrument was filed
on the date and time stamped hereon by me
and was duly recorded in the Official Public
records of Smith County, Texas.



OCT 14 1999

JUDY CAVINES
COUNTY CLERK, Smith County, Texas
By Jane Nichols Deputy

THE FIRST AMENDMENT AND RESTATEMENT
OF DECLARATION OF COVENANTS, CONDITIONS &
RESTRICTIONS FOR HOLLYCREEK VILLAGE,
Tyler, Smith County, Texas, Recorded in Volume 5002,
Page 306, Deed Records, Smith County, Texas
Is further amended as follows:

Filed for Record in:
SMITH COUNTY, TEXAS
JUDY CARNES, COUNTY CLERK
On Mar 30 2005
At 10:00am
Receipt #: 342974
Recording: 14.00
Doc/Num: 2005-R0014990
Doc/Type: REC
Deputy - Elena Glasscock

Article 12, Age Requirements, is deleted in its entirety and the following is substituted in lieu thereof.

“ARTICLE 12”

HOUSING FOR PERSONS WHO ARE 55 YEARS OF AGE OR OLDER

12.1 OVER 55 AGE REQUIREMENT. At least 80 percent of the occupied units of Hollycreek Village must be occupied by at least one person 55 years of age or older. In order to assure compliance with these requirements Hollycreek Village will be described to prospective residents as housing for persons who are 55 years of age or older. Advertising and other statements to the public regarding Hollycreek Village shall likewise refer to the community as housing for persons who are 55 years of age or older. Hollycreek Village shall at all times maintain verifiable records showing that at least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older. Persons under the age of 55, children or other minors under the age of 18 shall not occupy a unit without prior request to and approval by the Board. Upon prior request and good cause shown, the Board may grant exceptions to the occupancy requirements as long as the 80 percent requirement is met. “To Occupy” or “occupancy” means occupancy in excess of thirty (30) continuous days or sixty (60) days in any twelve (12) month period. Notwithstanding the foregoing, children or other relatives, guests and friends under the age of 18 may temporarily visit a unit as long as the child or other relative, guest or friend under the age of 18 does not occupy the unit as defined above. The Board may

STATE OF TEXAS, COUNTY OF SMITH
I hereby certify that this instrument was
filed on the date and time stamped hereon
by me and was duly recorded in the Official
Public records of Smith County, Texas.

HOLLYCREEK VILLAGE HOMEOWNERS
ASSOCIATION, INC.



MAR 30 2005

Judy Carnes
JUDY CARNES
COUNTY CLERK, Smith County, Texas
STATE OF TEXAS

By: *Maryc McGee*
President, Hollycreek Village Homeowners Association, Inc.

Attn: Betty Simmons
3805 Junn, #500
Tyler, Texas 75701

COUNTY OF SMITH §

SUBSCRIBED AND SWORN TO BEFORE ME ON THE 29 DAY OF

March, 2005, by Mary McGee

Hollycreek Village Homeowner's Association, Inc.

Jennifer Coleman
Notary Public - State of Texas

