

CHARLESTON PARK RESIDENTIAL SUBDIVISION ⁸⁰⁰⁰³¹¹

DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS

COPY

This DECLARATION OF COVENANTS, RESTRICTIONS, CONDITIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS AND EASEMENTS, hereinafter referred to as the "Declaration," is made on the 18th day of April, 2001 by Charleston Park, LLC, a Texas limited liability company, hereinafter referred to as "Developer."

WITNESSETH:

WHEREAS, Developer owns Lots 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 33, NCB 1620 of Charleston Park, Unit 1, a residential subdivision in Tyler, Smith County, Texas, according to the plat thereof recorded in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas; Mark Wheeler Homes, Inc., a Texas corporation, owns Lots 7, 21 and 22, NCB 1620 of said Charleston Park, Unit I; and Balser Homes, Inc., a Texas corporation, owns Lots 5, 18 and 32, NCB 1620 of said Charleston Park, Unit 1, all of said Lots being hereinafter referred to as the "Property;"

WHEREAS, Developer, Mark Wheeler Homes, Inc. and Balser Homes, Inc. shall be hereinafter collectively referred to as "Declarant;" and

WHEREAS, in order to enable Declarant to implement a general plan of development and accomplish the development of the Property, as well as other real property as may be hereafter added thereto by Declarant, the Developer or others, as a residential development of high quality and standards in a consistent manner with continuity and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property to the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth herein collectively called the "Covenants;"

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the Covenants, which shall be deemed as covenants running with the land and imposed upon and intended to benefit and burden each Lot, hereinafter defined, and the Common Area, hereinafter defined.

ARTICLE I - DEFINITIONS

1.01. Definitions. The definitions of certain words, phrases or terms used in this Declaration are set forth on Exhibit "A," which is attached hereto and incorporated herein for all purposes.

ARTICLE II -COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of this Declaration, the Property shall be subject to the Covenants, and the Covenants shall run with, be for the benefit of, bind and burden the Property.

2.02 Owners Bound. From and after the date of recordation of this Declaration, the Covenants shall be binding upon and inure to the benefit of Developer, the Declarant, each Owner, and the heirs, executors, administrators, personal representatives, successors and assigns of each Owner, whether or not so provided or otherwise mentioned in the Deed. Each Owner, his heirs, executors, administrators, personal representatives, successors and assigns, expressly agrees to pay, and to be personally liable for, the assessments provided for hereunder, and to be bound by all of the Covenants herein set forth.

2.03. Additional Property. Additional real property may become subject to this Declaration in the following manner:

- A. The Developer, its successors or assigns, shall have the unilateral right to add or annex additional real property to the development scheme of the Declaration by filing of record a Supplementary Declaration of Covenants, Restrictions, Conditions, Assessments, Charges, Servitudes, Liens Reservations and Easements with respect to such additional real property, hereinafter referred to as the **"Supplementary Declaration;"** provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the Covenants as may, in the sole determination of Developer, its successors or assigns, be necessary or desirable to reflect the different character, if any, of the additional real property and as are not materially inconsistent with this Declaration in a manner which adversely affects the concept of this Declaration.
- B. Any additions made pursuant to Subsection 2.03(A), when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the additional real property added to the Subdivision.
- C. The Developer shall have the exclusive and unilateral right, without the joinder, approval or consent of any person(s) or entity(ies), including, but not limited to any Owner(s) or Member(s), to cause the Association to merge or otherwise consolidate with any similar homeowners' association then having jurisdiction over any real property located in whole or in part within one (1) mile of any real property then subject to the jurisdiction of the Association. Upon such a merger or consolidation of the Association, the Association's properties, rights and obligations may, by operation of law or otherwise, be transferred to another surviving or consolidated association, or, alternatively, the Association's properties, rights and obligations as a surviving entity pursuant to a merger or consolidation. The surviving or

consolidated entity shall have the right to administer the Covenants together with the covenants and restrictions established upon any other real properties as one scheme.

- D. Notwithstanding the fact that the Developer may not be a Member of the Association by virtue of its sale or conveyance of all of its interest in the Property, the Developer, its successors and assigns, shall continue to be entitled to implement and exercise all of its rights under and pursuant to this Section 2.2, and all of the subsections hereby. With respect to any additional real property made subject to the Covenants by virtue of a Supplemental Declaration, the Developer, its successors and assigns, shall be an Owner and a Member with respect to such additional real property, and as it may be divided or subdivided according to applicable law, and as the Property may be expanded or increased by annexation, merger or consolidation.

ARTICLE III - ARCHITECTURAL CONTROL

3.01 Reservation and Assignment of Architectural Control. The Declarant, desiring (i) to provide for the preservation of the values and amenities in and upon the Property and each Lot and (ii) to subject the Common Area and each Lot to the reservation of architectural control hereinafter expressed for the purpose of implementing a general plan of development for the Property to insure the creation of a high quality, architecturally harmonious subdivision, which general plan of development and reservation of architectural control is for the benefit of the Property and each Lot and each Owner, or any part thereof, as well as for the benefit of the Developer as developer of the Property, hereby reserves the right and all rights to approve or disapprove as to:

- A. compliance with any specific restrictions imposed by Declarant, the Developer, the Architectural Control Committee, or anyone acting on behalf of either the Declarant, the Developer, or the Architectural Control Committee, with respect to a Lot, the Lots, and the Property and/or any part thereof;
- B. without limitation, harmony of external design, adequacy of structural design, location of improvements, allowing and location of exterior lighting, building and landscaping setbacks from property lines, outbuildings, playground equipment, recreational equipment, athletic equipment, basketball goals, swimming pools, square footage of improvements, driveways, and landscaping in relation to surrounding structures and topography which are now or hereafter may be existing or proposed, including, but not by way of limitation, architectural designs, setbacks, landscaping, color schemes, types and quality of construction materials, quality of workmanship, any and all subdivisions, resubdivisions (where permitted), exterior additions to, changes in, construction, paving, alteration or excavation of the Common Area or of any Lot or any part thereof (including, but not limited to the trees now located or to be located thereon) and any and all Dwellings, structures and other improvements located thereon, either permanent or temporary, including without limitation, additions to, changes in, or alterations of grade, landscaping, roadways, walkways,

signs, exterior lights, walls, fences, buildings, or other structures or improvements of any type or nature located thereon which any person or entity, including without limitation, governmental and quasi-governmental subdivisions or agencies, seeks to commence, erect, construct, place or maintain upon the Common Area or upon any Lot, or any part thereof.

These rights reserved by Declarant in this Section 3.01 are herein and hereby expressly transferred and assigned by Declarant to the Developer.

3.02 Appointment. The Developer shall have the exclusive right to appoint the members of the Architectural Control Committee. The Developer shall appoint the members of the Architectural Control Committee by filing a designation of appointment in the Official Public Records of Smith County, Texas. The number of members constituting the Architectural Control Committee and the members of the Architectural Control Committee may be changed or modified by the Developer at any time by the filing of a supplemental designation of appointment in the Official Public Records of Smith County, Texas.

3.03 Construction Requests. All requests for approval of any of the items set forth in Section 3.01, above, shall be submitted in writing to the Architectural Control Committee at 3311 Woods Boulevard, Tyler, Texas 75703, or at such other address as may from time to time be designated of record in the Official Public Records of Smith County, Texas, and shall be accompanied by complete and specific plans and specifications showing the nature, kind, shape, elevations, height, materials, color, location, landscaping, and other material attributes of the structure, improvement, addition, change, alteration or excavation of the Common Area or any Lot or any part thereof. All such requests for approval shall also be accompanied by the payment, in tender acceptable to the Architectural Control Committee, of an Application Fee as shall be set by the Architectural Control Committee from time to time in its sole discretion. The Architectural Control Committee shall have no duty to exercise the power of approval or disapproval hereby reserved.

3.04 Designation of Power of Approval. With respect to the Common Area and each Lot, or any part thereof, Developer does herein and hereby delegate the power of approval and disapproval, reserved above and assigned to Developer, to the Architectural Control Committee. This delegation of the power of approval and disapproval may be rescinded at any time by the Developer by the filing of an instrument so stating such act of rescission in the Official Public Records of Smith County, Texas. As long as this delegation of the power of approval and disapproval is in effect, any person or entity owning any interest in the Common Area, or any part thereof, or any Lot, or any part thereof (where permitted), shall be required to deal with the Architectural Control Committee, and not the Developer and the Developer shall have no responsibility or liability of any nature whatsoever for the actions of the Architectural Control Committee.

3.05 Prior Approval. No dwelling, building, garage, outbuilding, storage building, fence, wall, sign, exterior lighting, pole, antenna, television or satellite dish, driveway, sidewalk, other walkway, mailbox, athletic equipment, recreational equipment, playground equipment, basketball goals, other structure or apparatus, either permanent or temporary, or landscaping shall be commenced, erected, constructed, placed or maintained upon the Common Area or upon any Lot, nor shall any exterior addition thereto, change therein or alteration, excavation, subdivision, or resubdivision thereof, including without limitation changes in or alteration of grade, landscaping, roadways, and walkways, be made until the plans and specifications showing the nature, kind, shape, height, materials, color, location, and other material attributes of the same shall have been submitted in writing to and approved in writing by the Architectural Control Committee as to (i) compliance with the Covenants herein contained, and (ii) harmony of external design and location in relation to surrounding structures and topography which are now or hereafter existing or proposed, including, but not limited to, as to architectural designs, setbacks, landscaping, color schemes and construction materials. The Architectural Control Committee shall have the right to promulgate a form for submission of such items to the Architectural Control Committee, and upon such promulgation, all Owners shall be required to use the form for all such submissions. In the event the Architectural Control Committee fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been properly submitted to it, approval will not be required, and the requirements for approval set forth in this Article shall be deemed to have been fully met and performed. Non-exercise of the powers hereby reserved by Declarant in one or more instances shall not be deemed to constitute a waiver of the right to exercise such power in other or different instances. Likewise, approval of anyone set of plans and specifications shall not be deemed to constitute approval of any other or different plans and specifications. In the absence of gross negligence or willful misconduct attributable to the Architectural Control Committee, such Architectural Control Committee shall not be liable for the improper enforcement or failure to exercise any of the powers reserved and delegated unto said Architectural Control Committee pursuant to this Article. The fact that some type of structure or improvement may be mentioned in this Declaration is not in any manner to be construed as a statement that such type of structure or improvement will be allowed on any Lot in the Subdivision, as the final approval or disapproval for any type of structure or improvement on any Lot shall be expressly vested solely in the Architectural Control Committee to be exercised at its sole discretion.

3.06 No Liability. In no event shall any approval obtained from such Architectural Control Committee pursuant to the terms of this Article be deemed to be a representation of any nature regarding the structural integrity or safety or engineering soundness of the structure or other item for which such approval was obtained, nor shall such approval represent in any manner compliance with any building or safety codes, ordinances or regulations, nor shall such approval be construed as a representation or warranty as to any matter which is the subject of such approval. No member of the Architectural Control Committee shall at any time have any liability to any Owner, Member or other person or entity for any decision(s) that are made by the member or the Architectural Control Committee so long as such decision(s) are made in good faith and are not arbitrary or capricious. Any and all errors or omissions from the plans submitted to the Architectural Control Committee shall be the sole responsibility of the Owner of the Lot to which the plans and improvements relate,

and the Architectural Control Committee, and each member thereof, shall have no obligation to check the plans for errors or omissions or to check such plans for compliance with this Declaration, zoning ordinances, laws, building lines, easements or rights-of-way, or any other issue.

ARTICLE IV - GENERAL RESTRICTIONS

4.01 Single-Family Residential Purposes. All Lots and all Permanent Improvements thereon shall be used only for single-family residential purposes. No Lot in the Subdivision shall be used for any commercial, business or professional purposes, as determined solely by the Architectural Control Committee exercising reasonable discretion and whose determination shall not be subject to challenge, review or appeal, judicially or otherwise. Each Owner by accepting a Deed to a Lot hereby waives any and all rights to challenge, review or appeal such determination by the Architectural Control Committee.

4.02 Types of Structures. Unless otherwise approved by the Architectural Control Committee, no Permanent Improvements shall be erected, constructed, altered or permitted to remain on any Lot other than one (1) detached single-family, residential dwelling. Each Dwelling Unit shall have a private garage as provided in Section 4.03, below. No used or previously constructed building or other structure shall be moved onto any Lot at any time. No structure of any kind of a temporary character and no trailer, mobile home, manufactured home, trailer home, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

4.03 Garage Construction. All garages constructed on any Lot shall be approved in writing by the Architectural Control Committee prior to the beginning of construction on the Dwelling Unit. Garages may not be closed in and occupied or used as part of a Dwelling Unit. Garages may not be used for other than storage and parking vehicles without the express written consent of the Architectural Control Committee, which consent may be withheld for any reason.

4.04 Setbacks. No Dwelling Unit, retaining wall or other improvement shall be located on any Lot nearer to the front Lot line than twenty (20) feet. No Dwelling Unit, retaining wall or other improvement shall be located on any Lot that is adjacent to an alley way nearer to the back Lot line than twenty (20) feet. No Dwelling Unit, retaining wall or other improvement shall be located on any Lot that is not adjacent to an alley way nearer to the back Lot line than five (5) feet. No Dwelling Unit shall be located on any Lot nearer to either side Lot line than five (5) feet. For purposes of this covenant, roof overhang, eaves and open porches shall be considered as a part of the Dwelling Unit. The Architectural Control Committee may, unilaterally without amendment to this Declaration, permit a change in any direction of the setback line on any Lot when in the sole opinion of the Architectural Control Committee it is determined to be advisable to permit such change.

4.05 Retaining Walls, Fences, Hedges and Other Screening Material. No retaining wall, fence, planter, hedge or other screening material may be erected or maintained on the Common Area

or on any Lot without the written consent of the Architectural Control Committee. No crossties, landscape timbers or keystone blocks or stone (or similar types of materials) may be used on any Lot for any purpose.

4.06 Construction Materials. All materials used in the construction of the exterior of any Dwelling Unit or other structure must be approved in writing by the Architectural Control Committee before commencement of construction. Only new construction materials shall be used (except for brick if and as approved by the Architectural Control Committee on a case by case basis).

4.07 Drilling Activity. At no time shall the drilling, usage or operation of any water well or any well or excavation for any oil, gas or other minerals be permitted on the Common Area or on any Lot.

4.08 Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Dwelling Unit or elsewhere on any Lot or the Common Area.

4.09 Utilities. Each Dwelling Unit shall be required to be connected to the water distribution system and sanitary sewer collection system in the Subdivision in the easements adjacent to or within the respective Lot upon which the Dwelling Unit is located. Individual underground electrical service drops must be installed to each Dwelling Unit. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice. No gas, electric, power, telephone, water, sewer, cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required.

4.10 On Street Parking. On street parking on the Private Street shall be and is hereby restricted to only reasonable and normal deliveries, pick-ups, or short-time guests and invitees, and all parking on the Private Street shall be subject to such reasonable rules and regulations as shall be adopted from time to time by the Architectural Control Committee or the Board. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on the Private Street (i) any motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, (ii) any van in excess of three-quarters ($\frac{3}{4}$) of a ton, or truck of any type in excess of three-quarters ($\frac{3}{4}$) of a ton, nor (iii) any vehicle with painted advertising or magnetic sign(s).

4.11 Off Street Parking. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling Unit, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on any Lot in the Subdivision any (i) boat, motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, nor (ii) van in excess of three-quarters ($\frac{3}{4}$) of a ton, or truck of any type in excess of three-quarters ($\frac{3}{4}$) of a ton, unless parked completely inside the garage of a Dwelling Unit such that the door on the garage can be completely closed and such that such boat, motor home, recreational vehicle, bus, tractor, trailer, bob-tail truck, van or other type of truck is completely concealed from being visible from all points outside the Dwelling Unit.

4.12 Storage. No exterior storage of any items of any kind shall be permitted, except with prior written approval and authorization of the Architectural Control Committee, which consent may be withheld for any reason. This provision shall apply, without limitation, to woodpiles, camping trailers, boat trailers, travel trailers, boats, recreational vehicles, motorcycles, all terrain vehicles and unmounted pick-up camper units. Also, without limitation, no boat, recreational vehicle, motorcycle, all terrain vehicle, trailer, automobile, truck, or other vehicle or any type whatsoever, regardless of ownership, age, condition, type or appearance, shall remain on any Lot in any manner which could be construed as being stored, neglected, abandoned or otherwise not in frequent use, except pursuant to written approval of the Architectural Control Committee.

4.13 Garbage. No rubbish, garbage, or trash shall be placed or be allowed to remain at the exterior of any Dwelling Unit or other structure on any Lot, except in containers meeting the specifications of the Declarant or Architectural Control Committee. The placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the Architectural Control Committee. The placement of all such containers shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring property, Lots, Dwelling Units, pathways, and streets. Each Owner is responsible to provide that all rubbish, garbage, and trash shall be regularly removed from said Owner's Lot and rubbish, garbage, and trash shall not be allowed to accumulate

4.14 Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Architectural Control Committee; provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets so long as, in the sole discretion of the Architectural Control Committee, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners. If, in the discretion of either the Architectural Control Committee or the Board, an Owner's pet or pets do become a nuisance or threat to any Owner or otherwise becomes objectionable to any Owner, the Board shall give notice to the Owner of the pet or pets of such nuisance, threat or objection, and the Owner shall thereafter not be allowed to keep such pet or pets on the Owner's Lot or anywhere else upon the Property.

4.15 Re-subdivision. No Lot shall be further subdivided and no portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the Declarant, its successors or assigns.

4.16 Burning and Incinerators. No open fires shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

4.17 Signs. No exterior signs or advertisements of any kind may be placed, allowed or maintained on any Lot without prior approval and authorization of the Architectural Control Committee, except that mailboxes, residential nameplates, "For Sale" signs not to exceed five (5) square feet in size, and signs designating the contractor of the Dwelling Unit upon such Lot may be placed and maintained in conformity with such common specifications, including without limitation, reasonable restrictions as to size, as may be adopted from time to time by the Architectural Control Committee.

4.18 Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed on any Lot unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto and by the Architectural Control Committee. No outside toilets of any kind are permitted, except during the period of construction of a Dwelling Unit during which time chemically treated outside toilets shall be maintained in a manner subject to approval of the Architectural Control Committee. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source or onto any Lot.

4.19 Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.

4.20 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Lot which shall in the sole opinion of the Architectural Control Committee induce, breed or harbor plant disease or noxious insects.

4.21 Machinery, Fixtures and Equipment. No machinery, fixtures or equipment of any type, including without limitation, air conditioning or refrigeration equipment and clothes lines, shall be placed, allowed or maintained upon the ground on any Lot, except with prior written approval of the Architectural Control Committee (subject to all required approvals as to architectural control), and no such machinery, fixtures or equipment shall be placed, allowed, or maintained anywhere other than the ground (such as on the roof) except with prior written approval of the Architectural Control Committee.

4.22 Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property or any part thereof shall be subject to such rules and regulations as shall from time to time be established by the Architectural Control Committee, the Association or the Declarant.

4.23 Misuse and Mismanagement. No Lot and no part of the Common Area shall be maintained or utilized in such manner as to (i) present an unsightly appearance, (ii) unreasonably offend the sensitivity of a reasonable person, or (iii) constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, any Owners or residents of the Subdivision, as determined in the sole opinion of the Architectural Control Committee. No noxious or otherwise offensive condition or activity shall be allowed to exist or be conducted anywhere on the Property as determined in the sole opinion of the Architectural Control Committee.

4.24 Violation of Statutes, Ordinances, and Regulations. No Lot or the Common Area shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental or quasi-governmental agency or subdivision having jurisdiction over the Property.

4.25 Violation of Rules or of Covenants. No Lot shall be maintained or utilized in violation of (i) this Declaration, or (ii) the rules and regulations of the Developer, the Architectural Control Committee, the Board or the Association, or (iii) any of the Covenants.

4.26 Renting Restricted. No part of any Dwelling Unit, guest quarters, garage or other structure of any type whatsoever on any Lot may be rented by any Owner or by any other person or entity at any time without the prior written consent of the Architectural Control Committee. In the event that there is a guest quarters on a Lot that is separate from the Dwelling Unit and that has been approved by the Architectural Control Committee, no person or persons may occupy such guest quarters for a period of more than seven (7) continuous days without the written consent of the Architectural Control Committee. In consenting to rental or to occupancy of a guest quarters for a period in excess of seven (7) continuous days, the Architectural Control Committee shall have the right to place such rules, regulations and restrictions on such rental or occupancy as the Architectural Control Committee shall in its sole discretion determine, which rules, regulations and restrictions may vary from situation to situation. No "For Rent" sign or "For Lease" sign or any other similar sign or signs of any nature whatsoever may be placed, allowed or permitted at any time on any Lot.

4.27 Single Family Use. Each Dwelling may be occupied by one (1) family consisting of persons related by blood, adoption or marriage, or by no more than four (4) unrelated persons. No other persons may occupy any Dwelling without the prior written consent of the Architectural Control Committee, which consent may be withheld for any reason. Each Owner by accepting a Deed to any Lot agrees to be bound by the definition of single family as set forth in this paragraph.

4.28 No Commercial Activity or Use. No Lot or improvements on any Lot shall be used for any business, professional, commercial or industrial purposes of any kind whatsoever. No

activity or use, whether or not for profit, shall be conducted on any Lot or in any improvements on any Lot which is not related to single family residential purposes. Nothing in this Declaration shall prohibit the Declarant from using a Dwelling as a temporary sales office until the Declarant's last Lot in the Subdivision shall be sold and closed and all Dwelling being constructed by Declarant, or any of the Declarant's owners, have sold all Dwellings constructed or under construction owned by them.

4.29 Vehicle Parking. Any and all vehicles to be parked overnight on any Lot shall be parked in the garage on the Lot to the extent that the garage is fully utilized (e. g. if a garage is a two car garage, there must be two motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage; if a garage is a three car garage, there must be three motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage, etc.). If, and only if, the garage is fully utilized by parking vehicles inside the garage, then an Owner may allow a vehicle to be parked overnight on an Owner's Lot outside of the garage. The Board shall have the right adopt parking rules or regulations that are more restrictive than the restrictions set forth in this Section 4.29 at the sole discretion of the Board, and in such event the more restrictive measure shall control in the event of any conflict between this Section 4.29 and any rule or regulation adopted by the Board. Notwithstanding anything to the contrary contained in this Declaration, in no event shall any Owner be allowed to park any vehicle on any street in the Subdivision overnight.

4.30 Lantern Pole. Each Owner shall install a lantern pole light in the location in the front portion of each Lot as directed by the Architectural Control Committee. The style, model and manufacturer of the lantern pole light shall be mandated by the Architectural Control Committee. The wattage of the light in the lantern pole light shall not exceed 120 watts. Each such lantern pole light shall be equipped with a photo cell, or similar device, that will automatically cause the lantern pole light to illuminate during darkness hours and shut off during daylight hours. The Owner shall be responsible to ensure that the lantern pole light, and the photo cell or other controller for such light, is in good working condition at all times.

4.31 Rear Lot Exterior Lighting. For each Lot that is adjacent to an alley way, the Owner shall install and maintain at all times an adequate security light or lights as shall be mandated and approved for each such Lot by the Architectural Control Committee. Each such security light or lights shall be equipped with a photo cell, or similar device, that will automatically cause the security light or lights to illuminate during darkness hours and shut off during daylight hours. The Owner shall be responsible to ensure that the security light or lights, and the photo cell or other controller for such light or lights, is in good working condition at all times.

ARTICLE V - IMPROPER MAINTENANCE BY OWNER

5.01 Improper Maintenance. In the event any portion of the Common Area, any Lot, any Dwelling Unit, or any Permanent Improvement is in the reasonable judgment of the Board so maintained by the Owner thereof (i) as to present a public or private nuisance, (ii) as to substantially

detract from the appearance or quality of the surrounding Lots or other areas of the Property or any adjacent land now or hereafter owned by Developer, or its successors or assigns, not presently included as a part of the Property, but which may be affected thereby or related thereto, or (iii) as to not in any manner comply with and of these Covenants, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto deliver written notice thereof to the offending Owner that unless corrective action is taken within ten (10) days from the date of such written notice to remedy the situation, the Board will cause such action to be taken at such Owner's cost to remedy the situation, including entry upon the Owner's Lot, if necessary. Any entry upon a Lot by the Board or anyone at the direction of the Board shall not be deemed a trespass or other violation of any law, ordinance or statute, and neither the Board nor anyone else entering upon any Lot shall be subject to any liability therefor. If after the expiration of said ten (10) day period the requisite corrective action has not been taken, the Board shall be and is hereby authorized and empowered by the violating Owner to cause such remedial action to be taken, and all costs thereof and associated therewith, including but not limited to the costs of collection, court costs and reasonable attorneys' fees, such costs being herein collectively called the "**Maintenance Charges,**" together with interest accruing thereon from the date or dates of occurrence of such costs at the maximum rate of interest which may be charged under applicable law from such date until paid, shall be assessed against the offending Owner and the offending Owner's Lot. The Maintenance Charges, together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VI hereof. Written notice of such assessment shall be delivered to the offending Owner by the Board which notice shall specify the amount of such Maintenance Charges and shall demand payment thereof within thirty (30) days after the date of said notice.

5.02 Subdivision Greenbelt. By accepting a Deed to any Lot, each Owner (i) agrees to and shall pay such Owner's pro rata share of the cost to landscape, irrigate, repair and maintain the Common Area and (ii) agrees that the landscaping, irrigation, repair and maintenance of the Common Area will enhance the beauty and value of the Subdivision and the Owner's Lot. The costs for landscaping, irrigation, repair and maintenance of the Common Area shall hereinafter be called the "**Common Area Maintenance Charges.**" For purposes of determining each Owner's pro rata share of the Common Area Maintenance Charges, each Lot will be assessed one-thirtyfirst (1/31) of the Common Area Maintenance Charges. The Developer, its successors and assigns, or the Board, subject to the approval of the Architectural Control Committee, shall have the right to determine how the Common Area will be landscaped, irrigated, repaired and maintained. At such intervals as shall be determined by the Developer, its successors and assigns, or the Board, a statement will be sent to each Owner for the Owner's prorata share of the Common Area Maintenance Charges, and each Owner agrees to pay the Owner's pro rata share of the common Area Maintenance Charges within ten (10) days of the date shown on the statement. If the Owner's pro rata share is not paid within said ten (10) day period, the Developer, its successors and assigns, or the Board shall be and is hereby authorized and empowered to take any and all such action as determined in the sole discretion of the Developer, its successors and assigns, or the Board to enforce the collection of the Owner's unpaid pro rata share of the Common Area Maintenance Charges, together with court costs, reasonable attorneys' fees and interest accruing thereon from the due date at the maximum rate of interest which may be charged under applicable law. The Common Area Maintenance Charges,

together with all interest accruing thereon, shall be secured by the Assessment Lien as provided in Article VI hereof.

ARTICLE VI - IMPOSITION OF LIEN; OWNERS' AGREEMENT

6.01 Imposition of Assessment Lien and Priority of the Lien. Each Lot shall be and is subject to a continuing servitude in the form of the right and authority of the Developer, the Architectural Control Committee, or the Association, acting either jointly or independently, to impose a lien, the Assessment Lien, against an Owner's Lot at any time after the date of recordation of this Declaration for all delinquent Maintenance Charges, Common Area Maintenance Charges, and/or Assessments, and all interest accrued thereon, court costs and reasonable attorneys' fees as provided for in Article V hereof. Except as provided in Section 7.03 hereof, the Assessment Lien against an Owner's Lot shall be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise and be imposed upon each such Lot, except that such Assessment Lien shall be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.

6.02 Owner's Agreement. Each Owner, owning a portion of the Property or of any Lot, for said Owner, and the Owner's heirs, executors, administrators, personal representatives, successors, and assigns, covenants and agrees:

- A. that the Owner acquires the Owner's Lot subject to the Maintenance Charges, the Common Area Maintenance Charges, the Assessments, and the Assessment Lien; and
- B. that by accepting a Deed to the Owner's Lot, the Owner is, shall be, and shall remain personally liable for any and all Maintenance Charges, Common Area Maintenance Charges and Assessments assessed against the said Owner's Lot while the said Owner is (or was) the Owner thereof, regardless of whether such covenants or agreements are expressed in such Deed and regardless of whether the said Owner signed the Deed; and
- C. that by accepting a Deed to the Owner's Lot and to secure the Owner's performance hereunder, the Owner conveys the Lot, and all portions thereof, to the Association, and its successors and assigns, in Trust, with a power of sale, and warrants and agrees to defend the title to the Lot, and all portions thereof. If the Owner pays all of the Maintenance Charges, Common Area Maintenance Charges and Assessments imposed against the Owner's Lot as provided herein, this conveyance in trust shall have no further effect. If the Owner fails to pay any of the Maintenance Charges, Common Area Maintenance Charges or Assessments imposed against the Owner's Lot, the Association in its capacity as trustee shall have the right to nonjudicially foreclose upon the Assessment Lien granted herein in accordance with and upon

compliance with the provisions of the Texas Property Code, as the same may be amended or supplemented from time to time.

ARTICLE VII - ENFORCEMENT OF DECLARATION AND OF ASSESSMENT LIEN

7.01 Enforcement By Developer or Architectural Control Committee. The Developer, the Architectural Control Committee, or the Association, acting either jointly or independently, shall each have the right, jointly or severally, to enforce the provisions of this Declaration, including, but not limited to, enforcement of the Assessment Lien. However, if the Developer, the Architectural Control Committee or the Association shall fail or refuse to enforce this Declaration, or any part hereof, for an unreasonable period of time after written request from an Owner to do so, then any Owner shall also have the right to enforce this Declaration at the said Owner's sole cost and expense by any appropriate action, whether at law or in equity, and neither the Developer, nor the Architectural Control Committee nor the Association shall have any liability for failing or refusing to enforce this Declaration to any Owner or any other person or entity.

7.02 Enforcement Remedies. If the Owner of any Lot fails to pay any Maintenance Charges, Common Area Maintenance Charges or Assessment assessed, or to pay any interest accrued on any Maintenance Charges, Common Area Maintenance Charges or Assessment, and any and all costs (including court costs and attorneys' fees) incurred by either the Developer, the Architectural Control Committee, or the Association, or any one of them, in collecting same, the Developer, the Architectural Control Committee and/or the Association, as applicable, shall have the right to enforce the payment of the Maintenance Charges, Common Area Maintenance Charges and Assessments, and all interest accrued thereon and costs incurred by either the Developer, the Architectural Control Committee or the Association, or any one of them, in collecting same, and/or enforce the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Developer, the Architectural Control Committee and the Association do not prejudice there exercise of any other remedy):

- A. bring an action at law and recover judgment against the Owner personally obligated to pay the Maintenance Charges, Common Area Maintenance Charges or Assessments; or
- B. enforce the Assessment Lien against the Lot by any means available at law or in equity, including without limitation a nonjudicial foreclosure sale of the Lot, such sale to be conducted in the manner set forth in 51.002 of the Texas Property Code, as the same may be amended or supplemented from time to time. The Developer or any other Owner may be the purchaser at any such foreclosure sale.

7.03 Subordination of the Assessment Lien to First Mortgage or Deed of Trust. The Assessment Lien provided for herein shall be subordinate to any valid first mortgage lien (purchase money or improvement loan) held by, or deed of trust of which the beneficiary is, an institutional

lender which is chartered (or licensed) by the United States or any state within, the United States. Sale or transfer of any Lot shall not affect the Assessment Lien, provided, however, that if the sale or transfer is pursuant to foreclosure of any such superior mortgage lien or deed of trust, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage lien foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens, or encumbrances (except lien for taxes or other public charges which by applicable law are expressly made superior and except to the extent stated herein with respect to any subsequent first lien financing) , and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take the Lot or Property subject to all Maintenance Charges, Common Area Maintenance Charges and Assessments, and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

ARTICLE VIII -RIGHTS AND POWERS

8.01 Enforcement. The Developer, the Architectural Control Committee, the Association and each Owner, jointly or severally, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, or liens provided for in any contract, deed, declaration, or other instrument affecting all or any part or parts of the Property or any Lot. Any such instrument shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Developer, the Architectural Control Committee, each Owner and/or the Association; provided, however, that any such instrument that is recorded subsequent to recordation of this Declaration shall at all times be subordinate and inferior to this Declaration whether or not so provided in such instrument.

8.02 Right to Inspect. The Developer, the Architectural Control Committee and the Association, jointly or severally, shall have the right to enter upon all Lots for the purpose of inspecting whether or not the Owner thereof is in compliance with the Declaration and Covenants. If during the course of construction of a Dwelling Unit upon a Lot, the Developer, the Architectural Control Committee or the Association, jointly or severally, determines in its/their sole discretion that there is a violation of the Covenants, the Developer, the Architectural Control Committee or the Association, as appropriate, may order a discontinuance of the construction of the Dwelling Unit until such time as corrective measures have been taken to assure full compliance with the Covenants, and an Owner's failure to immediately discontinue or cause the discontinuance of construction of the Dwelling Unit, upon demand by Developer, the Architectural Control Committee or the Association, shall constitute a further violation of this Declaration by that Owner.

8.03 Fines. The Association and/or the Board shall have the right to levy reasonable fines against any Owner who (i) violates any of the Covenants, (ii) violates any other covenant, restriction,

reservation, charge, servitude, assessment or conditions set forth in this Declaration, or (iii) violates any rule or regulation enacted, passed or otherwise approved by the Developer, the Architectural Control Committee, the Board or the Association. Such fines against any Owner shall be an Assessment, as herein defined.

- A. When the Association or the Board shall levy a reasonable fine against any Owner or Owners, the Association or the Board, as applicable, shall give written notice of such fine to the affected Owner or Owners by United States mail, certified mail, return receipt requested, with proper postage affixed thereon. Upon receipt of such written notice, the Owner or Owners shall have ten (10) days to request a private meeting with the Association or Board, as applicable, to discuss the nature of the violation giving rise to the fine.
- B. At the conclusion of the private meeting provided for in Section 8.03(A), above, the Association or the Board, as applicable, shall advise the Owner or Owners in writing of its final decision with respect to the violation. If the final decision results in a fine being levied against the Owner, the Owner shall pay such fine within ten (10) days of such final decision. If such fine is not fully paid within such ten-day period, the Association or the Board may to enforce such Assessment as provided in this Declaration.

ARTICLE IX- THE ASSOCIATION

9.01 Establishment. The formal establishment of the Association will be accomplished by the filing of the Articles of Incorporation of the Charleston Park Homeowners' Association with the Secretary of State of the State of Texas and the subsequent issuance by the Secretary of State of the Certificate of Incorporation of the Association. The Association has not been established on the date of the filing of this Declaration. The Association may be formed after the date on which this Declaration is recorded.

9.02 By-Laws. By-Laws for the Association will be established and adopted by the Board.

9.03 Membership. The Developer and each Owner of a Lot, including successive buyers, shall automatically and mandatorily become and be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Every Member shall have a right at all reasonable times during regular business hours of the Association to inspect the books and records of the Association.

9.04 Voting Rights. The Association shall have two (2) classes of membership to be designated as Class A and Class B.

- A. Class A Members shall be all Owners with the exception of the Declarant. No Class A Member shall be entitled to vote as long the Declarant owns any Class B

membership interest. Each Class A Member shall, once the Class A Members are entitled to vote, be entitled to one (1) vote for each individual Lot owned. When more than one person owns an interest in an individual Lot, all such persons shall be members of the Association, however, the one (1) vote voting right for such Lot shall be exercised collectively as the owners of the particular Lot shall among themselves determine.

- B. The Developer shall be the Class B Member for so long as it owns any Lot in the Subdivision, including additions to the Subdivision as provided herein. When any Lot is sold by the Developer, to an Owner other than the Developer, the Class B membership with respect to such Lot shall cease and automatically become and be a Class A membership. For so long as the Developer, owns any Class B membership, the Declarant shall be the only Member of the Association entitled to vote.

9.05 Suspension of Class A Voting Rights. It is possible, as provided in Section 9.04, for the Class A Members to become entitled to vote (by virtue of the Developer's sale of all of the lots in a particular phase of the Subdivision) and then to have such entitlement to vote subsequently suspended because of the Developer's adding additional real property to the Subdivision as provided in Section 2.03 of this Declaration. If at any time while the Class A Members are entitled to vote Developer adds or annexes additional real property to the Subdivision, the Class A Members' entitlement to vote shall be suspended and deferred for any period(s) of time that the Developer shall own any Lot in the Subdivision which has never been conveyed to a Class A Member. The Developer's reacquisition of any Lot that has been previously owned by a Class A Member shall not result in the suspension or deferral of the entitlement of the Class A Members to vote.

9.06 Board of Directors. The Board shall be elected by the Members as provided in the By-Laws. The Board shall conduct the business of the Association, except when a membership vote is required by this Declaration, the Articles of Incorporation or the By-Laws.

9.07 Assessments. Each Lot is hereby subject to an annual maintenance charge and assessment for the purpose of creating a fund to be used for the mutual benefit of all Owners and the Subdivision. The amount of such annual maintenance charge shall be determined by the Board, and, except as is provided in Subsections 9.07(A) and 9.07(B), below, such annual maintenance charge shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual maintenance charge may be used for, among other purposes, upkeep, repair and maintenance of the Common Area. The Board shall also have the right to levy and charge to the Owners special assessments for such purposes that shall benefit the Subdivision as the Board, in its sole discretion, shall determine. Except as is provided in Subsections 9.07(A) and 9.07(B), below, the special assessments shall be paid by the Owner of each Lot to the Association in accordance with the procedures that shall be adopted from time to time by the Board. The annual maintenance charge, and any special assessments, and any fine levied against any Owner as provided in section 8.03 of this Declaration, shall be collectively referred to

herein as the "Assessments." If an Owner shall own more than one Lot, the Owner shall be responsible for paying the full annual maintenance charge and the full special assessment for each Lot owned by the Owner.

- A. Notwithstanding anything contained in this Declaration or elsewhere, the Developer shall not at any time be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment.
- B. Notwithstanding anything contained in this Declaration or elsewhere, a homebuilder who purchases a Lot directly from the Developer shall not be required to pay nor otherwise be responsible for payment of any annual maintenance charge or any special assessment for a period of one (1) year from the date that such homebuilder purchases a Lot from the Developer. If, prior to the expiration of the one-year exemption period, the homebuilder sells the Lot to any other person or entity, the exemption shall automatically and without notice lapse, and the new Owner shall then be fully responsible for all annual maintenance charges and special assessments.

9.08 Conflicts. The Association may make whatever rules, regulations and By-Laws it deems necessary or desirable to govern the Association and its Members; provided, however, that any conflict between the Association's rules, regulations and By-Laws and the provisions of this Declaration shall be controlled by and resolved in favor of this Declaration.

ARTICLE X - RESERVATIONS OF DECLARANT

10.01 Reservations. The following reservations are hereby made by Declarant:

- A. The utility easements shown on any Plat are dedicated with the reservation that such utility easements are for the use and benefit of any public utility operating in Smith County, Texas, as well as for the benefit of Developer to allow for the construction, repair, maintenance and operation of a system or systems of electric light and power, telephone lines, television cable lines, security, gas, water, sanitary sewers, storm and sewers and any other utility or service which Developer may find necessary or proper.
- B. Declarant reserves the right from time to time to make changes in the location, shape, and size of, and additions to, the easements described in Section 10.01(A), above, for the purpose of more efficiently or desirably installing utilities therein and thereon, and this right to make such changes is herein and hereby expressly transferred and assigned to Developer.
- C. The title conveyed to Lot or any part of the Property shall not be held or construed to include the title to the water, gas, electricity, telephone, storm sewers or sanitary sewers lines, poles, pipes, conduits, cable television lines or other appurtenances or

facilities constructed by Developer or public utility companies upon, under, along, across or through such utility easements; and the right (but no obligation) to construct, maintain, repair and operate such systems, utilities, appurtenances and facilities is reserved to Developer, its successors and assigns.

- D. The right to sell or lease the liens, utilities, appurtenances and other facilities described in Section 10.01(C), above, to any municipality, governmental agency (including any water control or utility district created under Article XVI, Section 59 of the Texas Constitution covering the Property as well as other lands), public service corporation or other party is hereby expressly reserved to Declarant, and such right is herein and hereby expressly transferred and assigned by Declarant to Developer.
- E. Neither Declarant, nor Developer, nor their respective successors or assigns, shall be liable for any damage done by any of such parties or any of their agents or employees to shrubbery, trees, flowers or other property of any Owner situated on the Lots covered by the above described utility easements.
- F. The right to enter upon any Lot or Lots during installation of streets for the purpose of performing street excavation, construction, and paving is hereby reserved to Declarant, its successors and assigns, and such right is herein and hereby expressly transferred and assigned by Declarant to Developer. Neither Declarant, nor Developer, nor their respective successors or assigns, shall be liable for any damage done by said parties or any of their agents or employees to shrubbery, trees, flowers or other property of the Owner which is necessitated by such street construction.

ARTICLE XI - TERMS; AMENDMENTS; TERMINATIONS

11.01 Term; Method of Termination. This Declaration and the Covenants shall be effective upon the date of recordation hereof and, as may be amended from time to time, shall continue in full force and effect to and including December 31, 2051. From and after December 31, 2051, this Declaration, as it may have been amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners of at least seventy-five percent (75.0%) of the Lots (there being only one vote per Lot which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes for termination at a meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

11.02 Amendments.

- A. Until the Developer has initially sold all of the Lots, such sales being evidenced by the recording of a deed from the Developer to the initial buyer of a Lot, the Developer shall have the right to unilaterally change or amend this Declaration at any

time for any reason or purpose as determined at the sole discretion of the Developer. After all of the Lots have been initially sold by Declarant, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least seventy-five percent (75.0%) of the Lots (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting called pursuant to 11.03.

- B. If additional real property is added or annexed as part of the development scheme as contemplated by this Declaration, from the time of the Developer's, its successors or assigns, filing of record the Supplemental Declaration and until the Developer has initially sold all of the Lots that are part of such addition or annexation, such sales being evidenced by the recording of a deed from the Developer to the initial buyer of such additional or annexed Lots, the Developer shall have the right to unilaterally change or amend this Declaration at any time for any reason or purpose as determined at the sole discretion of the Developer. After all of the additional or annexed Lots have been initially sold by Declarant, this Declaration may be amended or changed in whole or in part at any time only by the affirmative vote of the then Owners of at least seventy-five percent (75.0%) of the Lots, including the additional or annexed Lots, (each Owner having one vote per Lot owned which shall be exercised collectively by any multiple owners of interests in any one Lot as they may among themselves determine) casting their votes to amend or change this Declaration at a special meeting called pursuant to 11.03.

11.03 Election Procedures. The affirmative votes required under Sections 11.01 and 11.02 hereof shall be obtained and evidenced by the requisite vote of the Owners (including Developer if applicable) present at a meeting of Owners duly called by at least fifty percent (50.0%) of the Owners or by the Developer pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration. The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein) and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Developer. In any event, a copy of the minutes shall be delivered to the Developer prior to any amendment or change becoming effective.

11.04 Recording Amendments. Upon the amendment or change of this Declaration (and/or the Covenants contained herein) as herein provided, and upon the other conditions set forth in Section 11.01 or 11.02 (as the case may be) and 11.03 of this Article being satisfied, then each amendment shall be executed by the (i) the Developer, its successors or assigns, or (ii) the Owners who voted in favor of the amendment or change, placed in recordable form, and filed of record in the Real Property Records of Smith County, Texas, accompanied by a statement that the requisite percentage of Owners have voted to make such amendment to this Declaration.

11.05 Effect. Upon the filing of an amendment or change in accordance with Section 11.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

11.06 Other Right of Amendment. Anything in this Article to the contrary notwithstanding, Declarant, its successors and assigns, reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be required by any federal, state, or local agency which requires such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of the Property or any portion thereon. Any such amendment shall be effected by the recordation, by Declarant, its successors or assigns, of a Certificate of Amendment signed by Declarant, its successors or assigns, with proper signature acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requiring the amendment and setting forth the amendatory language required by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's requirement for such an amendment, and such Certificate, when recorded, shall be binding upon the Property, or the affected portion thereof, and all persons or Owners having an interest in the same. Except as provided in this Section 11.06, Declarant shall not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 11.02 hereof. This right to amend the Declaration is herein and hereby expressly transferred and assigned by Declarant to Developer.

ARTICLE XII -RESERVATION OF RIGHT TO RESUBDIVIDE

Subject to the approval of any and all appropriate governmental agencies having jurisdiction over the Subdivision or any Lot, Declarant hereby reserves the right at any time while it is the Owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of the Subdivision or of any Lot or Lots then owned by Declarant without the consent of any Owner. This right to subdivide or resubdivide is herein and hereby expressly transferred and assigned by Declarant to Developer.

ARTICLE XII-MISCELLANEOUS

13.01 Interpretation of the Covenants. Except for judicial construction, the Board shall have the exclusive right and power to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by this Declaration and the provisions hereof.

13.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other, remaining provisions hereof, which remaining provisions shall be and remain in full force and effect.

13.03 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the Rule Against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) if applicable, those of the issue of the William Pillsbury who are living at the time the period of perpetuities starts to run on the challenged interest.

13.04 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

13.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Developer, the Board or the Architectural Control Committee, as applicable, shall have the right to adopt rules and regulations with respect to all other aspects of the rights, activities and duties of the Developer, the Board or the Architectural Control Committee, as applicable, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

13.06 Disclaimer of Representation. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Official Public Records of Smith County, Texas, neither the Declarant, the Developer nor the Architectural Control Committee makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out.

13.07 Limitation of Liability. In the absence of gross negligence or willful misconduct attributable to (i) Declarant, or its successors or assigns, or (ii) Developer, its successors or assigns, or (iii) the Architectural Control Committee (and any and all members thereof), neither Declarant nor its successors or assigns, nor the Developer, nor its successors or assigns, nor the Architectural Control Committee (nor any member thereof) shall have any liability of any nature whatsoever arising out of or in any manner related to the performance or nonperformance of any of the rights and powers reserved unto Declarant or the Architectural Control Committee, or their respective heirs, personal representatives, successors or assigns, pursuant to this Declaration.

13.08 Successors and Assigns. Any reference in this Declaration to Declarant or the Developer shall include Declarant's and the Developer's respective successors and assigns.

13.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

13.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

13.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to each such person or entity at the address given by such person or entity to the party sending the notice or to the address of the Dwelling Unit or the office of such person or entity if no address has been given. Such address may be changed from time to time by notice in writing.

13.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly subject to all prior recorded documents affecting the Property.

13.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

13.14 Suspension of the Covenants. The Developer and the Architectural Control Committee shall and do have the right during the period of construction, development, and sale of the Lots in the Subdivision, to grant reasonable and specifically limited exemptions from the Covenants to Declarant and any other developer or contractor. Any such exemptions shall be granted only upon specific written request, itemizing the exemption requested, the location thereof, the need therefor, and the anticipated duration thereof, and any authorization and approval thereof shall be similarly itemized. No such exemption shall be broader in terms of activity, location, or time than is reasonably required.

13.15 Non-Waiver. Any failure or delay on the part of either the Declarant, the Developer, the Architectural Control Committee and/or any Owner (i) to exercise any right, remedy or duty under this Declaration, or (ii) to take any action to enforce the Covenants or the Declaration, with regard to anyone matter or situation or group of matters or situations in any manner covered by or arising out of the Covenants or Declaration shall not in any manner be deemed or construed to be a waiver of any subsequent matter or situation or group of matters or situation arising hereunder. No forbearance of any type for any period of time by either the Declarant, the Developer, the Architectural Control Committee and/or any Owner shall be in any manner deemed or construed to

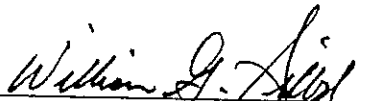
be a waiver of any right, remedy or duty hereunder, but all such rights, remedies and duties shall continue in full force and effect as if no forbearance had occurred.


13.16 Liberal Interpretation. This Declaration, and all of the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements, shall be liberally construed to effectuate the purposes of this Declaration.


IN WITNESS WHEREOF, we, the undersigned, have signed this Declaration on this 18th day of April, 2001, on behalf of the Declarant.

CHARLESTON PARK, LLC
A Texas Limited Liability Company

BY: 
JASON G. BALSAR, Member

BY: 
WILLIAM G. PILLSBURY, Member

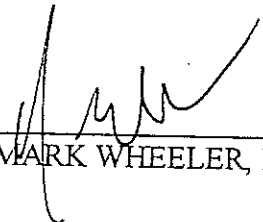
BY: 
ROBERT C. WAGNER, Member

BY: 
KENNETH W. WHEELER, SR.
Meember

BY: 
J. MARK WHEELER, Member

MARK WHEELER HOMES, INC.
A Texas Corporation

BALSAR HOMES, INC.
A Texas Corporation

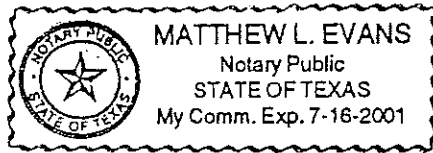
BY: 
J. MARK WHEELER, President

BY:  PRESIDENT
JASON G. BALSAR, President

ACKNOWLEDGMENTS

STATE OF TEXAS §
COUNTY OF SMITH §

This instrument was acknowledged before me on April 18, 2001 by Jason G. Balser, William G. Pillsbury, Robert C. Wangner, Kenneth W. Wheeler, Sr. and J. Mark Wheeler, Members of Charleston Park, LLC, a Texas limited liability company, on behalf of said company.

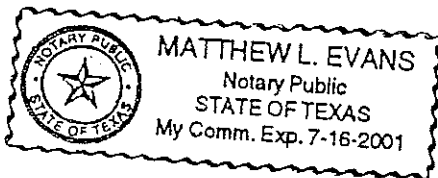


Matthew L. Evans

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
COUNTY OF SMITH §

This instrument was acknowledged before me on April 18, 2001 by J. Mark Wheeler, President of Mark Wheeler Homes, Inc., a Texas corporation, on behalf of said corporation.

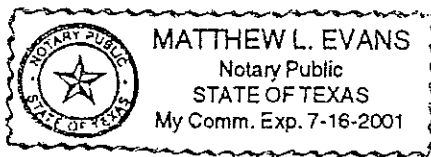


Matthew L. Evans

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS §
COUNTY OF SMITH §

This instrument was acknowledged before me on April 18, 2001 by Jason G. Balser, President of Balser Homes, Inc., a Texas corporation, on behalf of said corporation.



Matthew L. Evans

NOTARY PUBLIC, STATE OF TEXAS

WHEN RECORDED RETURN TO:

Mr. Jerry L. Atherton
Hardy & Atherton, P.C.
One American Center, Suite 750
Tyler TX 75701

EXHIBIT "A"

Definitions

The following words, phrases or terms used in this Declaration shall have the following meanings:

- A. **"Architectural Control Committee"** shall mean the Developer, Charleston Park, LLC, a Texas limited liability company, or such other person, persons or entity who shall be named to serve by Developer in conjunction with or as the successor to Developer, provided, however, that such change shall not be effective for purposes of these Covenants until a statement of such change has been duly recorded by the Developer, or Developer's successors or assigns, in the Official Public Records of Smith County, Texas. The Developer, or Developer's successors or assigns, shall have the right at any time to change the number of members comprising the Architectural Control Committee and the persons forming the membership of the Architectural Control Committee at the sole discretion of said Developer, or Developer's successors or assigns, by the filing for record in the Official Public Records of Smith County, Texas of a statement to such effect as provided herein.
- B. **"Assessable Property"** shall mean each Lot and the Permanent Improvements located thereon.
- C. **"Assessment"** means any general or special assessment at any time imposed by the Association as provided in Article IX of the Declaration.
- D. **"Assessment Lien"** shall mean the lien created and imposed against each Lot by Article VI of this Declaration.
- E. **"Association"** means the Charleston Park Homeowners' Association, Inc., a Texas non-profit corporation, its successors and assigns, to be established for the purpose set forth herein.
- F. **"Board"** means the Board of Directors of the Association.
- G. **"Common Area"** shall mean Lot 1 and Lot 2 of Charleston Park, Unit 1, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas.
- H. **"Common Area Maintenance Charges"** means any and all costs assessed as provided in Section 5.02 of this Declaration.

- I. **"Covenants"** shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations and easements set forth herein.
- J. **"Declarant"** shall mean collectively Charleston Park, LLC, a Texas limited liability company, Mark Wheeler Homes, Inc., a Texas corporation, and Balser Homes, Inc., a Texas corporation, and any successor or assignee of any or all of Declarant's rights and powers hereunder, but with respect to any such successor or assignee (i) such successor or assignee shall not be deemed to be a "Declarant" unless such successor or assignee is designated as such pursuant to a written instrument signed by Declarant, which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it relates, and (ii) such successor or assignee shall only have those rights and powers of Declarant that are specifically assigned to such successor or assignee pursuant to such written instrument.
- K. **"Declaration"** shall mean this Declaration of Covenants, Conditions, Assessments, Charges, Servitudes, Liens, Reservations and Easements as amended or supplemented from time to time as herein provided.
- L. **"Deed"** shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.
- M. **"Dwelling Unit"** shall mean a residential unit or structure, and any portion thereof, situated on a Lot designed and intended for use and occupancy as a residence by a single family.
- N. **"Lot"** shall mean each of lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33, individually, of Charleston Park, Unit 1, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas, as such plat may be amended from time to time, together with (i) any lots which may, from time to time, result from the resubdivision, combination or division of any of the Lots as may be shown upon a plat or plats of the Property, or any part thereof, hereafter filed for record in the Plat Records of Smith County, Texas, and (ii) such additional property or lots as may be added to the Subdivision as provided in This Declaration.
- O. **"Lots"** shall mean all of lots 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33, collectively, of Charleston Park, Unit 1, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas, as such plat may be amended from time to time, together with (i) any lots which may, from time to time, result from the resubdivision, combination or division of any of the Lots as may be shown upon a plat or plats of the Property, or any part thereof, hereafter filed for record in

the Plat Records of Smith County, Texas, and (ii) such additional property or lots as may be added to the Subdivision as provided in This Declaration..

- P. **"Maintenance Charges"** shall mean any and all costs assessed as provided in Section 5.01 of this Declaration.
- Q. **"Member"** means every person or entity who holds membership in the Association.
- R. **"Owner"** shall mean the person or persons, entity or entities, who, individually or jointly, own record title to the Common Area or to a Lot. The term "Owner" shall exclude any person or persons, entity or entities, having an interest in a Lot or any such parcel merely as security for the performance of an obligation. The term "Owner" shall include Developer if Developer is a record title owner of the Common Area or to a Lot.
- S. **"Permanent Improvements"** shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures and other materials and things located thereon, including without limitation, trees, berms, shrubs, hedges and fences.
- T. **"Plat"** shall mean the plat of the Property presently on file in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas, as such plat may be amended from time to time.
- U. **"Private Street"** shall mean Lot 1 of Charleston Park, Unit 1, as shown upon the Plat of the Property filed for record in Cabinet D, Slide 67-C of the Plat Records of Smith County, Texas.
- V. **"Property"** shall mean all of the real property described on the Plat, together with such additional real property as may be subsequently added thereto in accordance with this Declaration.
- W. **"Subdivision"** shall mean the residential subdivision located in Smith County, Texas, and known as Charleston Park, Unit 1, according to the Plat, as the same may be amended or supplemented from time to time, and such additional real property as may be added thereto as provided in this Declaration.