

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR SWENSON FARMS**

This Declaration of **Covenants, Conditions and Restrictions** for **Swenson Farms** (this "Declaration") is made by **STANDARD PACIFIC OF TEXAS, L.P.**, a Delaware limited partnership ("Standard Pacific"); and **TARO PROPERTIES TEXAS, L.P.**, a Texas limited partnership ("Taro Properties"; Standard Pacific and Taro Properties collectively are referred to herein as "Declarants"), and is as follows:

Statement of Intent:

Each of Declarants owns a portion of the Property (defined below). Declarants wish to jointly develop and subdivide the Property for residential purposes. Accordingly, Declarants intend to create and implement a uniform plan for the improvement, development and sale of the Property for the benefit of the present and future owners of the Property, and to convey the Property subject to the protective covenants, conditions, easements, restrictions, liens and charges hereinafter set forth. Declarants intend to create a homeowner's association to administer and enforce this Declaration, and to collect and disburse the assessments and charges hereinafter created.

NOW, THEREFORE, Declarants hereby declare (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the liens, easements, restrictions, covenants, and conditions stated herein, which are intended to protect the value and desirability of, and which shall run with, the Property, shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner (defined below) thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the liens, easements, covenants, conditions, and restrictions set out herein, regardless of whether or not the same are set out or referred to in said contract or deed.

**ARTICLE 1 Definitions**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 ACC. "ACC" shall mean the committee created herein to review and approve plans for the construction of Improvements upon the Property.

1.2 ACC Rules. "ACC Rules" shall mean any rules and regulations, including design guidelines, adopted by the ACC, as the same are amended from time to time.

1.3 Articles. "Articles" shall mean the Articles of Incorporation of Swenson Community Association, to be filed in the office of the Secretary of State of the State of Texas, as the same are from time to time amended.

1.4 Assessment. "Assessment" or "Assessments" shall mean assessment(s) levied by the Association under the terms and provisions of this Declaration.

1.5 Assessment Lien. "Assessment Lien" shall mean the lien created by this Declaration, as more particularly described in Article 9 below.

1.6 Association. "Association" shall mean and refer to Swenson Community Association, a Texas non-profit corporation.

1.7 Association Rules. "Association Rules" shall mean the rules and regulations adopted by the Board as the same may be amended from time to time.

1.8 Board. "Board" shall mean the Board of Directors of the Association.

1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association adopted by the Board, as the same are from time to time amended.

1.10 Common Area. "Common Area" shall mean either a fee simple or an easement interest in any land so designated by a Declarant, which is maintained and operated by a Declarant or the Association for the benefit of the Property, including, but not limited to, easements, roads, roadways, rights-of-way, parkways, medians, sidewalks, parks, paths, trails, recreational facilities such as swimming pools or tennis courts, clubhouses, water quality, drainage and/or detention areas, and ponds and lakes.

1.11 Completed Lot. "Completed Lot" shall mean a Lot within a Subdivision within which the street and utility improvements are substantially complete.

1.12 Declarants. "Declarants" shall mean Standard Pacific and Taro Properties, their successors or assigns. Any assignment of the rights of a Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of the Declarant shall not be sufficient to constitute an assignment of the rights of such Declarant hereunder.

time. 1.13 Declaration. "Declaration" shall mean this instrument as it may be amended from time to

1.14 Improvement. "Improvement" shall mean a structure or an appurtenance thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, trampolines, fountains, decorative statuettes, arbors, clubhouses, tree-houses, playscapes, play houses (when placed outside the residence), storage buildings, fences, screening walls, retaining walls, stairs, decks, Landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.15 Landscaping. "Landscaping" shall mean any proposed modification to a Lot, including but not limited to any grading, berms, gardening, irrigation systems, subsurface drainage systems, paving, introduced gravel or rock, nonstructural retaining walls, and introduced vegetation.

1.16 Lot. "Lot" or "Lots" shall mean any parcel or parcels of land within the Property shown as a subdivided lot on any Plat, together with all Improvements located thereon.

1.17 Member. "Member" or "Members" shall mean any Person holding membership rights in the Association.

1.18 Mortgage. "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Property given to secure the payment of a debt.

1.29 Mortgagee. "Mortgagee" shall mean the holder or holders of any Mortgage.

1.20 Owner. "Owner" or "Owners" shall mean any Person, including Declarants, holding a fee simple interest in any portion of the Property, but shall not include a Mortgagee (unless such Mortgagee acquires a fee simple interest in a portion of the Property).

1.21 Person. "Person" or "Persons" shall mean any individual(s), entity or entities having the legal right to hold title to real property.

1.22 Plans and Specifications. "Plans and Specifications" shall mean any and all documents designed to guide or control the construction or erection of any Improvement, including but not limited to, those indicating location, size, shape, configuration, materials; site plans; excavation and grading plans; foundation plans; drainage plans; Landscaping and fencing plans; elevation drawings; floor plans; specifications on all building products and construction techniques; samples of exterior colors (including roof color); plans for utility services; and all other documentation or information relevant to such Improvement. The Plans and Specifications shall locate by scaled drawings all sidewalks, driveways, utility lines and other Improvements.

1.23 Plat. "Plat" shall mean a subdivision plat of any portion of the Property of record in the Plat Records of Travis County, Texas.

1.24 Primary Responsibility Area. "Primary Responsibility Area" means, as to Standard Pacific, the portion of the Property described on Exhibit B attached hereto (sometimes referred to as the "Standard Pacific Primary Responsibility Area"), and as to Taro Properties, the portion of the Property described on Exhibit C attached hereto (sometimes referred to as the "Taro Properties Primary Responsibility Area").

1.25 Property. "Property" shall mean the land described on Exhibit A attached hereto and incorporated herein, together with such land as may be annexed from time to time in accordance with Article 2 below, all subject to withdrawals made pursuant to Article 2 below.

1.26 Public View. "Public View" shall mean, as to each Lot, visibility, at a height of six feet (6'), of a location on the Lot from a Street, Common Area, another Lot or property adjacent to the Property.

1.27 Restrictions. "Restrictions" shall mean this Declaration (including all amendments hereto), together with the Association Rules, the ACC Rules, the Articles and the Bylaws.

1.28 Street. "Street" shall mean a road or right-of-way that has been or is intended to be dedicated for use by the public.

1.29 Subdivision. "Subdivision" shall mean any portion of the Property which is subdivided, as shown on a Plat.

1.30 Supplemental Declaration. "Supplemental Declaration" shall mean any declaration of covenants, conditions, and restrictions which may be hereafter recorded by Declarants (or another Person with Declarants' approval) which is imposed against real property, and which expressly subjects such property to all the terms and restrictions of this Declaration (except as otherwise expressly stated in the Supplemental Declaration).

1.31 Visible Location. "Visible Location" shall mean a location on a Lot or Common Area which is in Public View.

## **ARTICLE 2**

### **Additions To and Withdrawals From The Property**

2.1 Staged Subdivision: Addition of Land. Declarants may develop certain real property (now owned or hereinafter acquired by either of, or both, Declarants) in the vicinity of the Property for residential purposes and may include such real property within the Property. Either Declarant, acting without the consent or approval of the other Declarant or any other Owner, may bring within the scheme of this Declaration additional land (an "annexation") so long as the owner of such Land (if not the annexing Declarant) consents to such action. A Declarant shall accomplish any such annexation by recording in the Travis County Official Records either a notice of addition or one or more Supplemental Declarations which comply with this Section. Land annexed by only one Declarant automatically shall be deemed included within the annexing Declarant's Primary Responsibility Area; if Declarants jointly annex land, the annexation instrument shall specify within which Primary Responsibility Area the annexed land shall be included. After the Class B Membership expires, additional land may be annexed into the Property at any time with the assent of two-thirds (2/3) of the votes of the Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter. If no modifications to this Declaration will apply to the annexed land, the annexing party may annex the land by filing a notice of addition of land which contains the provisions set forth below. Alternatively, a Supplemental Declaration may be used to accomplish the annexation. A Supplemental Declaration may, but need not, (i) provide that certain provisions of this Declaration shall not apply to the land annexed by the Supplemental Declaration, (ii) modify one or more provisions of this Declaration as applied to the land annexed by such Supplemental Declaration, (iii) impose different or additional restrictions or conditions upon the land annexed by the Supplemental Declaration, (iv) provide for the establishment of a sub-association comprised of the Owners within the land annexed thereby, or (v) establish its own procedure for the amendment of any provision thereof (for example, by specified vote of only Owners of Lots subject to the Supplemental Declaration, or by specified vote of only the Owners of some Lots subject thereto). An annexation shall be effective upon the recording of any notice of addition or Supplemental Declaration, and thereafter this Declaration and the liens, easements, covenants, conditions,

. restrictions and obligations set forth herein shall apply to the annexed lands and the rights, privileges, duties and liabilities of the Persons subject to this Declaration shall be the same with respect to the annexed lands as with respect to the lands originally covered by this Declaration (except as expressly provided otherwise in an applicable Supplemental Declaration). In the event of a conflict between this Declaration and a Supplemental Declaration, the Supplemental Declaration shall control. Any notice of addition or Supplemental Declaration must state that land is being annexed, and must contain at least the following provisions:

- 2.1.1 a reference to this Declaration, which includes the document number under which this Declaration is recorded in the Travis County Official Records;
- 2.1.2 a statement that the provisions of this Declaration shall apply to the annexed land, except as expressly provided otherwise therein;
- 2.1.3 a legal description of the annexed land;
- 2.1.4 the Primary Responsibility Area within which the land will be included; and
- 2.1.5 if neither Declarant is the owner of the land being annexed, the signatures of both such owner and the annexing Declarant.

Upon the recording of any notice of addition or Supplemental Declaration, all Owners of Lots within the area annexed by same shall have the rights, privileges, and obligations of other Owners herein, except as may be modified by a Supplemental Declaration, and thereafter the land so affected by the notice of addition or Supplemental Declaration shall be included within the term "Property" for all purposes hereof (except as may be modified by a Supplemental Declaration).

2.2 Withdrawal of Land. Either Declarant may withdraw land then owned by such Declarant from the Property (or with respect to land then owned by other Persons, Declarants and such Persons, acting jointly, may reduce or withdraw such land). Upon any such withdrawal this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the lands withdrawn. In order to withdraw lands from the Property hereunder, a Declarant shall be required only to record in the Official Records of Travis County, Texas, a notice of withdrawal of land containing the following provisions:

- 2.2.1 a reference to this Declaration, which includes the document number under which this Declaration is recorded in the Travis County Official Records;
- 2.2.2 a statement that the provisions of this Declaration shall no longer apply to the withdrawn land;
- 2.2.3 if neither Declarant owns the land so withdrawn, the signatures of both such owner and the withdrawing Declarant; and
- 2.2.4 a legal description of the withdrawn land.

**ARTICLE 3**  
**General Restrictions**

All of the Property and any right, title or interest therein shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

3.1 Division and Consolidation. After a Plat is recorded, no Lot shown thereon shall be further divided or subdivided, nor may Lots be combined to form one Lot, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof, without the approval of Declarants and the ACC; provided, however, that when one of Declarants is the Owner of a Lot, that Declarant may further divide and subdivide any Lot so owned, combine any Lots owned by that Declarant into any combination that Declarant may elect, and convey easements or other interests less than the whole in any Lot without the approval of the ACC or any other Owner. This Section does not require Declarant or ACC consent to the grant of a Mortgage or the conveyance of undivided interests in a Lot to persons holding same as tenants in common. If Declarants and the ACC approve a combination of multiple Lots into one Lot, the Owner of the consolidated Lots shall pay Assessments as if no consolidation had occurred (so that if two Lots are combined into one, the Owner shall pay Assessments for two Lots); but for all other purposes. of this Declaration, the consolidated lots shall be deemed one Lot.

3.2 Hazardous Activities. No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms; bows and arrows, or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units for cooking purposes while attended by a responsible adult.

3.3 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance, or cause the cancellation of insurance, on any Lot, Common Area or any of the Improvements located on either.

3.4 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, and no shafts, wells or derricks shall be allowed upon the Property.

3.5 Noise: Nuisance. No horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.6 Domestic Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property,

and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from Public View. No vicious or dangerous animals shall be allowed on the Property. The Board may adopt rules limiting the number of domestic pets kept on any Lot to three (3) or less.

3.7 Rubbish, Debris and Odors. No rubbish or debris of any kind (including weeds, brush or material of any nature deemed to be rubbish or debris by the ACC) shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other portion of the Property, other property or the occupants of same. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. In no event shall such containers be maintained in a Visible Location, except to make same available for collection, and then such containers may be so maintained in a Visible Location for no more than twenty-four (24) hours.

3.8 Towers and Antennas. No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location *unless* a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Lot where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the ACC. The ACC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "Telecommunications Act"), without ACC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Lot, (b) no television broadcast antenna mast or ham or other radio antenna may extend above the height of the center ridge of the roof of the primary dwelling structure on the Lot, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof. This Section 3.8 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Section 3.8, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("OTARD") promulgated under the Telecommunications Act or other rules and regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the ACC to act reasonably, or respond promptly, such obligation shall be deemed a part of the ACC's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein automatically shall be deemed deleted, and either Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

3.9 Signs. No sign of any kind shall be displayed in Public View on any Lot without the prior written approval of the ACC, except that an Owner may display on such Owner's Lot: (1) one sign of not more than six (6) square feet advertising the Lot for sale or rent, or (2) signs advocating a political position

or candidate (each, a "Political Sign"); provided, however, that no Political Sign may remain on a Lot for more than thirty (30) days in any twelve-month period. This Section 3.9 shall not apply to signs which are part of Declarants' marketing plan for the Property.

3.10 Tanks. The ACC must approve the location of any tank used or proposed in connection with a single family residential structure, including tanks for storage of fuel, water, or oil, and including swimming pool filter tanks. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened from Public View.

3.11 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property without the ACC's prior written approval, except that temporary structures for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with Declarants' prior approval (which shall include the nature, size, duration, and location, of such structure).

3.12 Unsightly Articles: Vehicles. No unsightly article shall remain on any Lot in a Visible Location. Without limiting the generality of the foregoing, trailers, graders, trucks (other than pickups), boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from Public View. Basketball goals shall not be deemed "unsightly" if installed or maintained in a manner approved before installation by the ACC. No repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures screened from Public View. No motor vehicle without current inspection stickers and licenses, and no vehicle with a designation of over 3/4 ton shall be stored within the Property without the prior written approval of the ACC. Any motor vehicle with visible advertising must be kept within an enclosed garage except when in actual use. Each primary dwelling structure built within the Property shall have sufficient garage space to house all vehicles to be kept on the Lot. No automobiles or other vehicles may be parked overnight on any Street within the Property for more than two (2) consecutive nights. No inoperable automobiles or other vehicles may be parked overnight on any Streets within the Property. Service areas, storage areas, air conditioning units, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be screened from Public View. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or screened from Public View. Any dispute as to whether an article is unsightly shall be resolved by the ACC, in its sole discretion.

3.13 Mobile Homes, Travel Trailers and Recreational Vehicles. No mobile home or manufactured housing in transit shall be parked or placed on any Lot, Street, or Common Area at any time. No travel trailer or recreational vehicle shall be parked on or near any Lot, Street, or Common Area in Public View at any time, except during the period of time such trailer, camper, vehicle or boat is being loaded, unloaded or cleaned. Declarants or the Association may adopt further rules and regulations governing the presence on, and parking, use and storage of, any commercial, recreational and other vehicles (including but not limited to those specifically named in this Section) within the Property. Any rules and regulations so adopted shall be binding upon each Owner as if set forth herein. In addition, any vehicle described in this Section which is present on the Property in violation hereof may be towed away or otherwise removed by or at the request of either Declarant or the Association, and at the sole expense of the Owner of the Lot upon



which or for whose benefit or enjoyment such vehicle is present. In the event of any such towing, neither Declarants, the Association nor any Association employee or agent shall be liable or responsible to such Owner for trespass, conversion or damage incurred incident to such removal, or for the cost of such removal, or otherwise, nor shall any Declarant, the Association or any Association employee or agent be guilty of any criminal act or have any civil liability by reason of such towing or removal, and such towing and removal shall not be grounds for relief by such Owner of any kind.

#### **ARTICLE 4** **Use Restrictions**

4.1 Residential Use. All Lots shall be improved and used solely for single family residential use, inclusive of a garage, fencing and such other Improvements as are necessary or customarily incident to residential use. No building, outbuilding or portion thereof may be used as income-producing property (i.e., for lease to tenants who do not occupy an entire Lot). A "single family" shall be defined as any number of persons related by blood, marriage or adoption, and also shall include foster children and domestic servants. This Declaration shall not, however, exclude from a Lot any person who is authorized to so remain by any state or federal law. If this Section 4.1 is held to violate any law, this Section shall be interpreted to be as restrictive as permitted by law in order to preserve as much as possible of the original intent of this Section.

4.2 Incidental Uses. No trade or business may be conducted in or from any Lot, except that an Owner or occupant may conduct business activities that are incidental to the primary residential use of the Lot so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the dwelling structure; (b) the business activity conforms to all zoning requirements and other provisions of the Restrictions; (c) the business activity does not involve visitation of the Lot by clients, customers, vendors or other business invitees, or door-to-door solicitation of residents of the Property; (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as the Board may determine; and (e) the business activities are permitted under applicable City of Pflugerville ordinances. Day care facilities, churches, nurseries, pre-schools and similar facilities are prohibited. The lease of an entire Lot as a single family residence will not be considered "conduct of a trade or business from the Lot" so long as the term of any such lease is at least six (6) months.

4.3 Common Area. No Common Area shall be improved, used or occupied, except in such manner as shall have been approved by the Board. Such required approval shall extend to the nature and type of use, occupancy and improvement.

#### **ARTICLE 5** **Construction and Design Restrictions**

5.1 Construction of Improvements. No Improvement shall be built or placed on any of the Property, nor any site preparation undertaken, until the ACC has approved Plans and Specifications for same.

5.2 Building Height. No Improvement greater than thirty-five feet (35') in height may be constructed on any Lot. For purposes of this Section, height shall be measured from the foundation slab of the proposed Improvement to the ridge line of the roof of the proposed Improvement.

5.3 Obstruction of Views. No Improvement maybe built on any Lot which would unreasonably obstruct the view from other portions of the Property. The positioning of all Improvements upon Lots is expressly subject to ACC review. The ACC may, but shall not be required to, base approval or disapproval of the construction of a proposed Improvement upon the impact such construction will have upon the view from other portions of the Property.

5.4 Building Materials; Dwelling Size. The exterior of the first floor of each primary dwelling structure shall be at least fifty percent (50%) masonry construction. Only brick, stucco and natural stone shall be considered masonry for purposes of this Section 5.4, and although stucco shall be considered masonry, stucco shall not be used to satisfy more than thirty (30%) of the masonry requirement for any primary dwelling. No masonry with gray color tones other than mortar will be permitted, and masonry shall not be painted. All siding material shall be horizontal lap siding manufactured out of fiber-cement (i.e., Hardi-Plank). All exterior siding and trim shall be painted with either shades of white or earth tones. The air conditioned portion of the primary dwelling structure shall have a floor area of not less than one thousand eight hundred (1,800) square feet, such area to be exclusive of all porches, carports, garages and other rooms which are not air conditioned with the main living quarters.

5.5 Construction in Place. All primary dwelling structures, buildings and swimming pools constructed on the Property shall be built in place on the Lot. No manufactured housing or prefabricated dwelling structure may be placed or assembled on a Lot, and no mobile home or pre-existing Improvement may be moved onto any Lot. The use of prefabricated materials other than trusses, wall panels, windows and doors is prohibited.

5.6 Roofing Materials. Roofing materials shall be dimensional fiberglass shingles in a "weathered wood" color with no less than a thirty (30) year materials warranty.

5.7 Driveway. The ACC may impose limitations on driveway design, including materials, aprons, location, and point of contact with Streets or private driveways. Driveways shall be constructed so that they have a sufficient rise in elevation to allow for the surface water drainage along the curb line of the adjacent Street, to continue without interruption or change in direction of flow.

5.8 Construction Debris. During initial construction of a dwelling structure on a Lot, and if the ACC so requires, during any renovation on a Lot, the Lot shall have an enclosed 8 x 8 trash storage area or dumpster. Such storage area or dumpster shall be removed promptly after construction is completed.

5.9 Foundation Exposure. No foundation on any Improvement maybe exposed more than thirty inches (30") above final grade. If a foundation would not otherwise comply with the preceding sentence, the foundation shall be built to include a finished wall matching the exterior wall of the primary dwelling structure, which will extend to within thirty inches (30") above final grade. Any structure with a pier and beam foundation shall have all mechanical, electrical and plumbing lines or fixtures located there under screened from Public View with fences to match the primary dwelling structure. Such fences must be placed no further to the rear of a Lot than the midpoint of the primary dwelling structure. The ACC shall determine the adequacy of any proposed screening.

5.10 Location of Improvements. No Improvements (except Landscaping) shall be located on any Lot nearer to the front Lot line than twenty-five feet (25'). Basketball goals approved by the ACC may be located nearer to the front Lot line than twenty-five feet (25') if so specified in the ACC approval. The front of a primary dwelling structure shall face the front of a similar structure across the Street whenever feasible, and the ACC shall resolve any conflicts arising from this requirement and make the final determination with regard to the orientation of the front of Improvements upon any Lot. No building shall be located on any Lot nearer than ten feet (10') to any rear Lot line, and no building shall be located on any Lot nearer than fifteen feet (15') to any side Lot line adjacent to a Street. Unless the building is to be located on more than one Lot, no building shall be located nearer than five feet (5') to an interior Lot line. No permitted accessory building shall be located nearer than five feet (5') to an interior Lot line or exceed nine feet (9') in height. For the purposes of this Declaration, eaves, steps and unroofed terraces shall not be considered as part of a building; provided, however, that this shall not be construed to allow any Improvement to encroach upon another Lot. Notwithstanding the general guidelines herein set forth as to location of Improvements upon the Lot, Declarants intend that Improvements be located so as to preserve existing trees, vegetation and topography to the extent reasonable and practical. The ACC may require or grant variances with respect to these guidelines, so long as (1) no Improvement encroaches upon any other Lot, any utility easement, or any public right-of-way, and (2) each building structure is located at least ten feet (10') from the primary dwelling structure on an adjacent Lot.

5.11 Greenbelt Open Space Lots. Lots adjacent to greenbelt, drainage or open space areas shall comply with the following: the boundary between the Lot and the greenbelt, drainage or open space area shall be fenced; the fence shall be six feet (6') in height, and no gates shall be allowed in the fence.

5.12 Fences. All Lots shall be fenced. Except as expressly stated in this Section, fences shall be of wood, wrought iron or decorative metal construction (any wrought iron or decorative metal shall be of a color and style specified by the ACC), or a combination thereof approved by the ACC, and shall be six feet (6') in height. All Lots shall be fenced so that with respect to any portion of a wood fence which faces any existing or proposed Street, the slats shall face the Street. Fences in side yards shall be located (i) so as to screen all air conditioning or other exterior equipment (except for utility meters) from view from each Street, (ii) at least ten feet (10') back from the front of the primary dwelling structure, and (iii) no farther from the front of the primary dwelling structure than the mid-point of such structure (any question regarding the "front" or "mid-point" of a primary dwelling structure shall be resolved by the ACC). Notwithstanding the foregoing, the ACC may in its discretion prohibit the construction of any proposed fence, modify the requirements as to how slats of a wood fence shall face, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from Public View.

5.13 Landscaping Requirements. Detailed landscape plans for each Lot may be submitted to the ACC for consideration after construction of the primary dwelling unit has begun, so long as such submission occurs at least ninety (90) days before completion of the primary dwelling unit. The ACC may waive the requirement of landscape plans for any Lot if the builder uses plans previously approved by the ACC for another Lot. There shall be no revisions made to approved plans without submission to and approval by the ACC of the revised plans. All introduced vegetation shall be trees, shrubs, vines, ground covers, seasonal flowers or sodded grasses which are commonly used in South Central Texas for landscaping purposes and which are approved by the ACC. Landscaping in accordance with the approved plans shall be installed

within ten (10) days after issuance of a certificate of occupancy with respect to the principal dwelling structure on a Lot. Extensions to the time limit may be granted by the ACC for up to an additional thirty (30) days on a case by case basis. The approved plans shall include permanent sodded grass or "ground cover" in all sodded areas. Winter rye shall be considered a temporary measure to reduce soil erosion through the winter season, and shall be completely demolished and replaced with sodded grass according to the approved plans. Each Lot shall be landscaped, at a minimum, with (a) full sodded front and side yards (in front of fences), (b) the following number of hardwood shade trees: two (2) per Lot on all Lots other than corner Lots and four (4) per corner Lot, and (c) ten shrubs sized five gallons or more. The hardwood shade trees required by this Section shall be no smaller in size than 2" caliper. All Owners are required to landscape front yards, side yards, and adjacent to building foundations. Trees, shrubs, ground covers, seasonal color and sodded grass shall be used in these areas to achieve the landscape intent according to the approved plans. After installation, Landscaping (including temporary Landscaping) shall be properly maintained at all times. Any Owner who wishes to plant one or more gardens upon their Lot must obtain ACC approval of any such garden and must follow ACC requirements as to size of the plot, visibility of the plot from Public View, and such other matters as the ACC may specify in any written approval. All "caliper" measurements referred to in this Declaration, shall mean measurements made one foot (1') above grade.

5.14 Protection of Existing Trees. Existing trees shall be deemed to be trees of 19" caliper and above. During construction, existing trees shall be preserved and protected to the extent reasonable for the intended development, as determined in the ACC's discretion. Building or paving operations occurring adjacent to existing trees to be saved shall be in accordance with the Restrictions. Demolition of existing trees shall mean any operation, including transplanting, which removes, uproots or renders the tree incapable of sustaining a healthy and thriving condition. The ACC may require that any tree which, in its sole discretion, it deems to have been unnecessarily demolished shall be replaced with one or more trees of a type and size approved by the ACC. Unless the ACC otherwise approves, an existing tree shall be replaced with trees aggregating at least the same number of caliper inches as the existing tree.

5.15 Sidewalks. If sidewalks are required by a Plat, each Owner of a Lot shown on that Plat must build or cause to be built on his Lot, in a location designated by the ACC, a concrete sidewalk complying with the specifications set forth in the Plat and these Restrictions, in conjunction with and at the time of construction of the primary dwelling structure on the Lot. Sidewalks shall extend from Lot line to Lot line and shall follow the pattern of the incoming sidewalks (as proposed or built) on adjacent Lots. Placement of sidewalks in public rights-of-way around the terminus of cul-de-sac shall follow the pattern of the incoming sidewalk (as proposed or built) on adjacent Lots and shall be placed four feet (4') from the curb line, so as to insure a continuous walk around the terminus. Owners of corner Lots shall install sidewalks parallel to the front Lot line and the side street Lot line. If not otherwise provided, Owners of corner Lots shall extend the sidewalks to a terminus at and with the street curb in accordance with all applicable governmental regulations respecting sidewalk construction and/or specifications. Any public utility easements provided along front and side Lot lines may be used for construction of sidewalks with the prior written approval of the ACC and of any utility companies furnishing utility service through such easements. Each Owner shall be responsible for the maintenance and repair of the sidewalk adjacent to such Owner's Lot after construction, and shall maintain such portion of the sidewalk in a good condition of repair.

5.16 Underground Utility Lines. Subject to the provisions of the Telecommunications Act, no utility lines, including but not limited to, wires or other devices for the communication or transmission of

telephone or electric current or power, cable television, or other type of line or wire shall be erected, placed, or maintained anywhere in or upon any portion of the Property unless the same shall be contained in pipes, conduit or cables installed and maintained underground or concealed in, under, or on buildings or other Improvements. This Section shall not prohibit the erection of above-ground temporary utility facilities in support of the initial construction of the primary dwelling structure. The installation of utility facilities, including but not limited to, location, type of installation equipment, trenching method and other aspects of installation for both temporary and permanent utilities shall be shown in the Plans and Specifications and shall conform to all requirements of governmental authorities or the applicable utility provider.

5.17 Drainage. Only a Declarant may interfere with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage and approved by the ACC.

5.18 . Slopes. All slopes adjacent to Streets must be limited to three to one slopes. If such a limitation is not possible, the Owner of the Lot must build a limestone retaining wall in a location and in accordance with specifications approved by the ACC.

5.19 Unfinished Structures. No structure shall remain unfinished for more than twelve (12) months after construction has begun.

5.20 Outbuildings. Except for garages complying with this Declaration, no outbuilding or structure, whether of permanent or temporary construction, and including without limitation a tent, barn, storage facility or greenhouse, shall be used, placed or built upon any Lot for any purpose; except that the ACC may permit guest quarters, pool houses or similar structures when it determines that such structures are compatible with the overall ambiance of the Property, and sheds for the storage of tools and equipment provided that such sheds (a) are of wood or masonry construction, (b) have a pitched roof of the same pitch and shingle color as the roof of the main dwelling structure, and (c) are painted the same color as the primary dwelling structure. Metal and plastic sheds are prohibited. No permitted accessory building shall be located nearer than five feet (5') to an interior Lot line or exceed nine feet (9') in height.

5.21 Exterior Illumination. Exterior illumination shall be kept to a minimum, but consistent with good security practices. Such illumination shall be designed and installed so as to light only buildings, driveway areas and walkways upon a Lot. No exterior light whose direct source is visible from Public View, or which produces glare from Public View is permitted: Indirect sources and horizontal cut-off fixtures are recommended to reduce glare and provide general ambient light. Soffit or tree lights must be shielded or directed towards vegetation so as to eliminate glare and source visibility. No lights other than white or color corrected high intensity lamps may be used for exterior illumination. Sodium, mercury vapor and bare HID yard lights are prohibited. Lighting which does not comply with this provision, as determined by the ACC, shall be shielded in such a manner as the ACC may specify. Any permitted ground-level light fixtures shall be depressed or screened from Public View in a manner approved by the ACC. No outdoor lighting shall be directed towards or focused in the Common Area, buffer zones, greenbelts or dedicated habitat or conservation easements. Holiday lighting on any Improvement shall be allowed annually only during the two (2) month period beginning on November 15 and ending the immediately following January 15 (no holiday lighting may remain in place after January 15).

5.22 Swimming Pools. No swimming pools shall be located in front or side yards.

5.23 Air Conditioning Equipment. No window, roof or wall mounted air conditioning units are permitted on the Property. All air conditioning compressors and other mechanical equipment located outside of a building shall be screened from Public View by fences approved by the ACC.

5.24 Garages and Carports. No carports shall be placed, erected, constructed, installed or maintained on the Property. Each primary dwelling unit shall have a garage as an appurtenance thereto which either is integrated into the design of the primary dwelling unit or, if detached, is architecturally composed to complement the primary dwelling unit. All garages shall be sized for at least two (2) standard size passenger vehicles. No garage may be sized to accommodate more than three (3) standard size passenger vehicles unless approved by the ACC. Garages may contain appropriately sized storage rooms, recreational workshops and tool rooms, or servants' quarters or guest quarters, all as approved by the ACC. All garages must have garage doors built or faced with wood or metal siding of a quality and color harmonious with the exterior of the primary dwelling structure. Each garage shall have garage doors that are wired so as to be operated by electric door openers. All garage doors shall remain closed at all times, save and except for the temporary opening of same in connection with the ingress and egress of vehicles and the loading or placement and unloading or removal of other items customarily kept or stored therein, when a person is in the garage or engaged in yard work, or there is another activity occurring on the Lot which is reasonably facilitated by an open garage door. No garage shall be converted to another use (e.g., living space) without the substitution, on the Lot involved, of another garage approved by the ACC and meeting the requirements of this Paragraph. Use of parking space in a garage for work areas or storage (including boxes, toys, exercise equipment, furniture, or work benches) to the exclusion of one or more vehicles is strictly prohibited.

5.25 Alteration or Removal of Improvements. No repair or alteration (other than normal maintenance) which alters the exterior appearance of any Improvement, and no removal of any Improvement, shall be performed without ACC approval. For example, any exterior repainting of any Improvement with a color or colors, or in an area or areas, other than those originally approved by the ACC shall require ACC approval. If any building Improvement is damaged or destroyed by casualty, hazard or other cause, including fire or windstorm, then within a reasonable period (not to exceed ninety (90) days after the occurrence of the event), the Owner of the affected Improvement shall cause same to be repaired or rebuilt, or to be removed and cleared from the Lot. Any such repair or rebuilding shall be approved and accomplished in the manner required for new construction under the Restrictions.

5.26 Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarants) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in Travis County, Texas. If construction upon any Lot does not conform to usual practices in the area as determined by the ACC, in its sole good faith judgment, the ACC may seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly; offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

**ARTICLE 6**  
**Repair and Maintenance Obligations**

6.1 Repair and Maintenance. Each Owner shall keep all shrubs, trees, grass, and plantings of every kind on such Owner's Lot cultivated, pruned, free of trash, and other unsightly material. Improvements shall at all times be kept in good, attractive condition and repair, and adequately painted or otherwise maintained by the Owner and/or occupants thereof. By way of example, maintenance obligations shall include (but are not limited to): maintenance of all visible exterior surfaces of Improvements and prompt removal of paper, debris, and refuse; removal of dead or diseased trees and Landscaping from the Property; prompt replacement of dull and/or peeling paint from the exterior of Improvements; mowing, watering, fertilizing, weeding, pruning, replanting and replacement of Landscaping; and during construction, the cleaning of dirt, construction debris, and other construction-related refuse from street and storm drains and inlets as often as deemed necessary by the Board. The ACC's recommendations with respect to tree disease control shall be followed immediately. Grass and weeds shall at no time be allowed to exceed 6" in height on any Lot (whether improved or unimproved). Owners of unimproved Lots shall keep same neatly trimmed and free of trash and other unsightly material. When permitted under Section 7.4.3, Declarants, the Association, or the ACC may enter on a Lot to replace, maintain, and cultivate shrubs, trees, grass, or other Landscaping as deemed necessary; and to paint, repair, or otherwise maintain any Improvements in need thereof, and may charge the cost thereof to the Owner of the Lot as provided in Section 7.4.3.

**ARTICLE 7**  
**The Association**

7.1 Organization. Promptly after this Declaration is recorded, Declarants shall form and incorporate the Association. The Association will be a Texas non-profit corporation, created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in the Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

7.2 Membership. Any Person upon becoming an Owner shall automatically become a Member of the Association. Declarants shall be Members of the Association so long as either Declarant owns any Lot. Membership shall be appurtenant to and shall run with the ownership of the Lot which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to the Lot.

7.3 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of members to the Board and on all other matters to be voted on by the Members shall be calculated as provided below. Owners entitled to vote under Section 7.3.1 are sometimes referred to as "Class A Members". Declarants are sometimes referred to as the "Class B Members".

7.3.1 The Owner (other than Declarants) of a Lot within the Property shall have one vote for each Lot owned.

7.3.2 For so long as either Declarant owns any portion of the Property, each Declarant shall have the number of votes equal to (A) one (1) vote for each Lot owned, plus

(B) three (3) votes for every one (1) vote outstanding in favor of a non-Declarant Owner. The total votes held by Class A Members and the total votes held by Class B Members shall be recalculated after any addition to or subtraction of lands from the Property.

7.3.3 If any Lot is owned jointly or in common by more than one Owner, the Owners of such Lot must designate in writing one Person who shall be entitled to cast the vote for such Lot, and only the Person so designated shall be authorized to vote on behalf of such Lot. A copy of the written designation must be filed with the Board before a vote is cast (and if the Owners do not file such a designation, the vote attributable to, such Lot shall not be deemed cast or counted for any purpose).

7.3.4 The Board may suspend an Owner's right to vote during any period when an Assessment against the Owner's Lot(s) remains past due.

7.4 Powers and Authority of the Association. The Association shall have the powers of a Texas nonprofit corporation, limited only as expressly stated in this Declaration. It shall have the power to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any express power granted to it by the laws of Texas or by this Declaration. Without limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, shall have the power and authority at all times as follows:

7.4.1 To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, the Association Rules and Bylaws. The content of the Association Rules and Bylaws may be established by the Board, provided the same are not in conflict with this Declaration.

7.4.2 To levy Assessments as provided in Article 9 below.

7.4.3 Subject to compliance with the Texas Property Code, to enter at any time in an emergency, or after twenty-four (24) hours written notice in a non-emergency, without being liable to any Owner or occupant, upon any Lot, in order to enforce the Restrictions or to maintain or repair any Common Area, Improvement, or other facility so as to conform to the Restrictions. The Association may levy a Compliance Assessment against such Owner and Lot in order to reimburse the Association for all expense incurred by the Association in connection with the entry upon any Lot and the cost of the maintenance and repair work conducted thereon. Failure to pay the Compliance Assessment upon demand shall be deemed a breach of the Restrictions which gives rise to all penalties for breach set forth in Section 12.8 below. The Association is authorized and empowered, from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to begin and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Restrictions. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient



to enforce the Restrictions, but the Board is not authorized to expend any Association funds for the purpose of bringing suit against Declarants, or their successors or assigns. Each Owner shall indemnify and hold harmless the Association, its officers, directors, employees and agents from any cost, loss, damage, expense, liability, claim or cause of action incurred or that may arise by reason of the Association's acts or activities under this Section 7.4.3 (including any cost, loss, damage, expense, liability, claim or cause of action arising out of the Association's negligence in connection therewith), except for such cost, loss, damage, expense, liability, claim or cause of action arising by reason of the Association's gross negligence or willful misconduct. "Gross negligence" as used herein does not include simple negligence, contributory negligence or similar negligence short of actual gross negligence.

7.4.4 Subject to the provisions of Section 11.2 below, to own, improve, grant and convey to any Person any Common Area, Improvements thereon, and/or any interest therein, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any of same for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or there under:

- (i) roads, streets, walks, driveways, parking lots, trails, and paths;
- (ii) lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (iii) sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines; or
- (iv) other Improvements or facilities which the Board determines will benefit the Owners generally.

Nothing in this subparagraph 7.4.4 shall permit the use or occupancy of any Improvement so as to violate other provisions of this Declaration. The Association may own personal property used in connection with the Common Area and Improvements located thereon.

7.4.5 To retain and pay for the services of a manager to manage and operate the Association, including the Common Area, as deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the manager. To the extent permitted by law, the Association and the Board may delegate any duties, powers, and functions to the manager. The Owners hereby release the Association and the members of the Board from liability for any omission or improper exercise by the manager of any such duty, power, or function so delegated.

7.4.6 To obtain and pay for any other property (real or personal) or services and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or this Declaration.

7.4.7 To acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.

- 7.4.8 To construct Improvements in Common Areas.

7.4.9 To enter into agreements with other non-profit homeowners associations or other non-profit entities which permit the members of such other associations or entities to use the Common Areas and facilities constructed therein provided that such members share in the costs of maintaining such Common Areas and facilities.

7.4.10 To do all things reasonably necessary in order to perform the duties of the Association set forth in the Restrictions.

7.5 Duties of the Association. Subject to and in accordance with this Declaration, the Association shall have and perform each of the following duties:

7.5.1 Accept, own and maintain in good condition and repair the Common Area, all Improvements thereon, all appurtenances thereto, and all personal property used in connection with same, including without limitation, all Streets (including median areas), which have been constructed but not yet accepted by the appropriate governmental entity, and all entry signs and related Landscaping.

7.5.2 Pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Common Area, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

7.5.3 Obtain and maintain in effect policies of insurance which, in the opinion of the Board, are reasonably necessary or appropriate to carry out the functions of the Association.

7.5.4 Keep books and records of the Association's affairs and to make such books and records, together with a current copy of this Declaration, available for inspection by Owners and Mortgagees upon request during normal business hours.

7.5.5 Carry out and enforce all duties of the Association set forth in this Declaration and in the Restrictions.

7.6 Indemnity. As more particularly provided in the Bylaws, the Association shall indemnify any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that

such Person is or was a director, officer, committee member, employee, servant or agent of the Association or the Board, against all claims and expenses including attorney's fees reasonably incurred by such Person in connection with such action, suit or proceeding, to the full extent permitted from time to time by the Texas Non-Profit Corporation Act.

## ARTICLE 8 ACC

8.1 Membership of ACC. The ACC shall consist of no more than four (4) voting members ("Voting Members"). The following Persons are hereby designated as the initial Voting Members: Joan , Surko, Bruce Dickson, Erie Perkins and James Hindsmarch. After the Class B Membership terminates, the Board may modify the number of Voting Members (but the number shall never be less than three (3)).

8.2 Term. Each Voting Member shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Upon the death or resignation of a Voting Member, the remaining Voting Members shall have full authority to act until a replacement Voting Member or Voting Member have been designated.

8.3 Declarants' Rights of Appointment. For so long as there exists a Class B Membership, each Declarant shall have the right to appoint and remove two (2) Voting Members. Either Declarant may delegate its right under this Section 8.3 to the other Declarant or to the Board in whole or part by written instrument. After the Class B Membership terminates, the Board may appoint and remove all Voting Members.

8.4 Adoption of Rules. The ACC may adopt design guidelines and/or procedural and substantive Piles, standards and policies, consistent with this Declaration, as it may deem necessary or proper for the performance of its duties and the orderly development of the Property. The design guidelines, rules, standards or policies may include but are not limited to, a building code, a fire code, a housing code, and other similar codes as it may deem necessary and desirable. Any design guidelines, rules, standards, policies and procedures so adopted shall be part of the Restrictions, and shall be binding and enforceable against each Owner in the same manner as any other provision of this Declaration.

8.5 Review of Proposed Construction. Whenever ACC approval is required by a provision of the Restrictions, the ACC may consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts which in its sole discretion, are relevant. Except as otherwise specifically provided herein, BEFORE beginning any construction of any Improvement on the Property or any portion thereof, the Plans and Specifications therefor shall be submitted to the ACC. **NO CONSTRUCTION SHALL BEGIN UNLESS AND UNTIL THE ACC HAS APPROVED IN WRITING THE PLANS AND SPECIFICATIONS FOR THE IMPROVEMENT.** Notwithstanding the preceding two sentences, neither of Declarants shall be required to submit Plans and Specifications to the ACC for any Improvement built by Declarants within the Property, except that if a Declarant is constructing residential Improvements upon a Lot, and if a variance would be required under Section 8.6 below in order to build those particular Improvements, the Declarant proposing such construction must submit Plans and Specifications to the ACC and obtain approval for the variance. The ACC shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and shall perform such other duties assigned to it by this Declaration or the Board, from

time to time. The ACC may review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the ACC of any information or documents deemed necessary by the ACC, it may postpone review of any Plans and Specifications submitted for approval. No Improvement shall be allowed upon any Lot which is of such size or architectural design or involves the use of such Landscaping, color schemes, exterior finishes and materials and similar features as to be incompatible with development within the Property and the surrounding areas. The ACC shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth in the preceding sentence or elsewhere in the Restrictions and the decision of the ACC shall be final and binding so long as it is made in good faith. The ACC shall not review, or be responsible for reviewing, any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes.

8.6 Variance. The ACC may grant variances from compliance with any of the provisions of Articles 3 or 5 when, in its opinion and in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the Property and/or is justified due to aesthetic considerations or unusual circumstances. All variances must be evidenced by a written instrument in recordable form, and must be signed by a majority of the Voting Members. The granting of such variance shall not operate to waive or amend any of the terms and provisions of the Restrictions applicable to the Lots for any purpose except as to the particular property and the particular matter covered by the variance, and such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

8.7 Actions of the ACC. The ACC may, by resolution, unanimously adopted in writing, designate one or two of its Voting Members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of a majority of the Voting Members taken with or without a meeting shall constitute an act of the ACC. Notwithstanding anything to the contrary, if the ACC fails to respond to a request for approval of Plans and Specifications within thirty (30) days of receipt of all required information, the ACC shall be deemed to have approved such Plans and Specifications to the extent they comply with the provisions of this Declaration. IN NO EVENT SHALL THE ACC DEEMED TO HAVE APPROVED ANY ASPECT OF PROPOSED PLANS AND SPECIFICATIONS THAT WOULD REQUIRE THE GRANT OF A VARIANCE UNDER SECTION 8.6 ABOVE.

8.8 No Waiver of Future Approvals. The ACC's approval or consent to Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any other Plans or Specifications or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

8.9 Work in Progress. The ACC may inspect all work in progress to insure compliance with approved Plans and Specifications.

8.10 Address. Plans and Specifications shall be submitted to the ACC c/o Goodwin Management Company, 11149 Research Boulevard, Suite 100, Austin, Texas 78759, ATTN.: Swenson Community Manager, or such other address as may be designated from time to time.

8.11 Fees. The ACC may require from each Owner a reasonable submission fee for each set of Plans and Specifications submitted for its review. As of the date of this Declaration, the ACC charges each Owner a fee of \$25.00 for reviewing Plans and Specifications for alterations to pre-existing Improvements or for proposed Improvements appurtenant to the main dwelling structure. The ACC will not charge a review fee to a builder who is building five (5) or more homes within the Property.

8.12 Certificate of Approval. After completion of any Improvement in accordance with Plans and Specifications approved by the ACC, and after written request by the Owner of the Lot, the ACC shall issue a Certificate of Approval in a form suitable for recordation. The Certificate shall identify the Lot and the Improvements, the use or uses to be conducted thereon, and the Plans and Specifications on file with the ACC pursuant to which the Improvements were made and shall specify that the Improvements comply with the approved Plans and Specifications. The Certificate shall not be construed to certify the acceptability, sufficiency, or approval by the ACC of the actual construction of the Improvements or the workmanship or materials thereof. Owners are hereby notified that a Certificate in no way warrants the sufficiency or acceptability of the construction, workmanship, materials, or equipment of the Improvements, but instead only confirms the ACC approval of the particular Improvements described in this Section. Preparation and recordation of such a Certificate shall be at the expense of the Owner of the improved Lot.

## ARTICLE 9 Funds and Assessments

9.1 In General. Assessments established pursuant to this Declaration shall be levied on a uniform basis against each Lot within the Property; provided, however, that Assessments shall not accrue against any Lot until the first (1<sup>st</sup>) day of the month which follows the month in which the last of the following occurs: (i) a Plat covering the area has been recorded, and (ii) all Lots within the area are Completed Lots. Where the obligation to pay an Assessment first arises after the commencement of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when said obligation first arose or change in Assessment first occurred in proportion to the amount of the Assessment year or other period remaining after said date. Each unpaid Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be the personal obligation of the Owner of the Lot against which the Assessment fell due, and shall be secured by a vendor's lien against each such Lot and all Improvements thereon. No Owner may exempt himself from liability for such Assessments. The Association may enforce payment of Assessments in accordance with the provisions of this Article.

9.2 Operating Fund. The Board shall establish an operating fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Declaration. The funds of the Association must be used solely for purposes authorized by this Declaration, as it may from time to time be amended.

9.3 Regular Annual Assessments. Before the date upon which Assessments begin to accrue hereunder, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Restrictions, including but not limited to duties required and activities authorized herein of the Association, the Board, and the ACC, and a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund.

Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. In no event, however, may the Board increase a regular annual Assessment by more than ten percent (10%) over the previous year's regular annual Assessment without the affirmative vote of the Members voting at a meeting duly called to vote on such matter with a quorum represented in person or by proxy. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time and from time to time levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

9.4 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion such special Assessments are necessary to enable the Board to carry out the functions of the Association under the Restrictions. The amount of any special Assessments shall be at the reasonable discretion of the Board.

9.5 Compliance Assessments. The Board may levy a Compliance Assessment against any Lot as reimbursement for costs (including attorney's fees) incurred by the Association or the ACC in order to place such Lot in compliance with the Restrictions, as authorized and provided in Section 7.4.3.

9.6 Interest; Late Fees. In the event of default in the payment of any such Assessment, Board may require the defaulting Owner to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof, and all costs and expenses of collection, including reasonable attorneys' fees. The Board may charge late fees for delinquent payment of Assessments in such amounts as the Board may from time to time deem appropriate.

9.7 Assessment Lien and Foreclosure. Subject to the Texas Property Code, all sums assessed in the manner provided in this Article but unpaid, plus interest and late fees authorized by Section 9.6 hereof and charged by the Board, and the cost of collection, including attorneys' fees as herein provided, shall be secured by the Assessment Lien, which will be a continuing lien and charge on the Lot assessed, and which shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns. The Assessment Lien shall be superior to all other liens and charges against the Lot, except for tax liens and liens of first Mortgages securing unpaid sums borrowed for acquisition or improvement of the Lot in question, which shall be superior to the Assessment Lien. The Association, in the discretion of the Board, may subordinate an Assessment Lien to any other lien. Such subordination must be signed by a duly authorized officer of the Association. To evidence an Assessment Lien, the Association shall prepare a Notice of Lien stating the amount of the unpaid debt, the Owners of the Lot covered by the lien and a description of the Lot. Such notice shall be signed by an officer of the Association and shall be recorded in the office of the County Clerk of Travis County, Texas. The Assessment Lien shall attach with the priority above set forth from the date that the payment secured becomes delinquent. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee any Assessment which then has been unpaid more than thirty (30) days after the date due.

Each Owner, by accepting a deed to his Lot, recognizes the Assessment Lien as existing before his ownership of his Lot and hereby grants the Board the right and power to bring all actions against such Owner

or Owners personally to collect unpaid Assessments and other sums due hereunder as a debt, and to enforce the Assessment Lien by all methods available for the enforcement of liens, both judicially and by non judicial foreclosure pursuant to Texas Property Code § 51.002 (as same may be amended or revised from time to time hereafter). Additionally, by acceptance of the deed to his Lot, each Owner expressly GRANTS, BARGAINS, SELLS AND CONVEYS to the President of the Association (from time to time serving) as trustee (and to any substitute or successor trustee as hereinafter provided for), that Owner's Lot and all rights appurtenant thereto, in trust, for the purpose of securing such Owner's payment of Assessments and other sums due hereunder from time to time. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and filed in the Office of the County Clerk of Travis County, Texas. If the Board forecloses the Assessment Lien because of nonpayment of sums secured by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, of the request of the Board (which request shall be presumed) to enforce this trust and to sell such Lot, and all rights appurtenant thereto, at the door of the County Courthouse of Travis County, Texas, on the first Tuesday in any month between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash at public auction after the trustee and the Board, respectively, shall have given notice of the proposed sale in the manner hereinafter set forth, and to make due conveyance to the purchaser(s), with general warranty of title to such purchaser(s) binding upon the Owners) of such Lot and his heirs, executors, administrators and successors. The trustee shall give notice of such proposed sale by posting a written notice of time, place and terms of the sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse door of Travis County, Texas, and, in addition, the Board shall serve written notice at least twenty-one (21) days preceding the date of sale or the proposed sale by certified mail on each of such Owner or Owners according to the records of the Association. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to such Owner(s) at the most recent address as shown by the records of the Association, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service. In any foreclosure proceeding, whether judicial or non judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred.

At any foreclosure, judicial or non judicial, the Association may bid up to the amount of the sum secured by the Assessment Lien, together with costs and attorneys' fees, and may apply as a cash credit against its bid all sums due to the Association secured by the Assessment Lien foreclosed. From and after any such foreclosure, the occupants of such Lot shall pay a reasonable rent for the use of such Lot, such occupancy shall constitute a tenancy-at-will, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rent, and further may sue to recover possession of such Lot by forcible detainer without further notice.

This Section is intended to comply with the provisions of Texas Property Code § 51.002, relating to non judicial sales by power of sale. If § 51.002 is amended in a manner which affect this Section, the President of the Association, acting without joinder of any other Owner or Mortgagee or other person may, by amendment to this Declaration filed in the Office of the County Clerk of Travis County, Texas, amend the provisions hereof so as to comply with said amendments to § 51.002.

## **ARTICLE 10 Easements**

10.1 Reserved Easements. All dedications, limitations, restrictions, and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made before the Property became subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes 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 either Declarant conveying any part of the Property. Declarants reserve the right to make changes in and additions to such easements and rights-of-way so as to most efficiently and economically develop the Property. Declarants also reserve the right, without the necessity of the joiner of any Owner or other Person, to grant; dedicate, reserve or otherwise create; at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, electricity, telephone and drainage) in favor of any Person along any front, rear, or side boundary line of any Lot, which said easements shall have a maximum width-often feet (10') on either side of such Lot line.

10.2 Installation and Maintenance. Declarants hereby establish easements upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, gas, telephone, and electric lines and appurtenances thereto. These easements allow utility companies and other service providers to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this Section, no electrical lines, water lines, or other utilities or appurtenances thereto may be relocated on the Property until approved by the ACC. The utility companies furnishing service shall have the right to remove trees within the utility easements shown on a Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

10.3 Drainage Easements. Each Owner shall provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the ACC thereon require. Each Owner further agrees not to alter or change the course of such drainage so as to divert, increase, accelerate or impede the flow of water over and across such easements. More specifically, no Owner may:

10.3.1 Alter, change or modify the existing natural vegetation or design of the drainage easement so as to affect the flow of surface water through same;

10.3.2 Alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation therefrom without the prior written approval of the ACC (which shall not be granted unless the Owner provides a written report from a licensed civil engineer establishing that the proposed action will have no adverse effect on any other portion of the Property or adjoining properties);

10.3.3 Construct, erect or install a fence or other structure of any type or nature within or upon such drainage easement; provided, however, that the ACC may approve a



fence if proper openings are incorporated therein to accommodate the flow of water over said easement (as established by a written report from a licensed civil engineer and as authorized by all applicable governmental agencies);

10.3.4 Store anything, whether temporarily or permanently, within the easement area; or

10.3.5 Place, store or allow to accumulate trash, garbage, leaves, limbs or other debris within or upon the easement area, either on a temporary or permanent basis.

10.4 Surface Areas. The surface of easement areas for underground utility services may be used to plant Landscaping subject to compliance with other provisions of this Declaration, but no Declarant nor any supplier of any utility service who uses any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

## **ARTICLE 11 Common Area**

11.1 Conveyance of Common Area. From time to time, either Declarant may identify and convey to the Association, and the Association shall accept, fee simple or easement interests in portions of the Property which shall be held by the Association as Common Area. Declarants will make multiple conveyances of Common Area to the Association, and the Association's obligations set forth herein with respect to Common Area shall refer only to the Common Area owned by the Association at the particular point in time. Each conveyance shall be, at Declarants' election, by special warranty deed or easement with special warranty of title, subject in either instance to all matters set forth in this Declaration, all liens securing the payment of taxes for the current and all subsequent years, and all easements, liens, rights of way, prescriptive rights, encroachments, overlapping of improvements, discrepancies, conflicts, leases, reservations, mineral severances, restrictions, covenants, conditions, regulations, and other rights, claims, title exceptions and other matters of any kind or nature affecting all or any of the real property interests conveyed as Common Area, whether of record in the real property records of Travis County, Texas or apparent on the Common Area. Each such conveyance shall be made solely for the benefit of the Owners and all right, title and interest in the Common Area so conveyed shall be held by the Association solely for the use and benefit of the Owners. Any such conveyance shall be made by the Declarant and accepted by the Association, "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL. WITHOUT LIMITING THE FOREGOING, DECLARANTS SHALL NOT MAKE AND SPECIFICALLY SHALL NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE COMMON AREA, INCLUDING, WITHOUT LIMITATION, THE ACREAGE, WATER, SOIL OR GEOLOGY OF THE COMMON AREA OR ANY SURROUNDING AREAS, (B) THE VALUE OF THE COMMON AREA, (C) THE SUITABILITY OF THE COMMON AREA FOR ANY AND ALL ACTIVITIES AND USES WHICH MAY BE CONDUCTED THEREON, (D) THE COMPLIANCE

OF THE COMMON AREA OR THE OPERATION THEREOF WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING WITHOUT LIMITATION ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (E) THE DISPOSAL OR EXISTENCE, IN OR ON THE COMMON AREA, OF ANY ASBESTOS, PCB. EMISSIONS, HYDROCARBONS, RADON GAS, OR HAZARDOUS OR TOXIC MATERIALS, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OF ANY IMPROVEMENTS WITHIN THE COMMON AREA OR MATERIALS, IF ANY, INCORPORATED INTO THE COMMON AREA, (G) THE STATE OF REPAIR OR LACK OF REPAIR OF THE COMMON AREA OR ANY IMPROVEMENTS THEREIN OR THERETO, OR (H) ANY OTHER MATTER WITH RESPECT TO THE COMMON A. IF THE ASSOCIATION OR ANY OWNER REQUESTS ANY INFORMATION WITH RESPECT TO THE COMMON AREA, THE ' ASSOCIATION OR OWNER SHALL ACKNOWLEDGE THAT SUCH INFORMATION SHALL NOT HAVE BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY DECLARANTS. DECLARANTS SHALL MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION, AND DECLARANTS SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL. OR WRITTEN STATEMENTS, REPRESENTATIONS, REPORTS, SURVEYS OR OTHER INFORMATION OF ANY KIND OR NATURE PERTAINING TO THE COMMON AREA, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT, OR OTHER PERSON. The Association shall and hereby does agree to indemnify and hold harmless each Declarant from and against all liability, damages, suits, actions, costs and expenses of whatsoever nature (including reasonable attorney's fees) to persons or property caused by or arising out of any use or activities of the Association or any of the Owners upon or within the Common Area.

11.2 Extent of Easements. Every Owner shall have the right and easement of enjoyment in and to the Common Area, which right and easement is appurtenance to the Lots, and which is subject to the following:

- 11.2.1 The Association's right to prescribe rules and regulations for the use, enjoyment, and maintenance of the Common Area.
- 11.2.2 The Association's right to sell and convey the Common Area, or any part thereof, provided that, such sale or conveyance must be approved by at least two-thirds (2/3) of the votes of each class of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice of which shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- 11.2.3 The Association's right to borrow money for the purpose of improving the Common Area, or any part thereof, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that such mortgage, pledge or hypothecation is approved by at least two-thirds (2/3) of the votes of each class of Members who are eligible to vote in person or by proxy at a meeting duly called to vote on such matter, written notice of which

shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

11.2.4 The Association's right to take such steps as are reasonably necessary to protect the Common Area, or any part thereof, against foreclosure.

The Association's right to suspend the easements of enjoyment of any Member of the

11.2.5 Association during the time any Assessment remains unpaid, or for any infraction of its published rules and regulations.

11.2.6 Declarants' rights (hereby expressly reserved) to use and enjoy the Common Area for construction offices, construction staging areas, and for any other purposes whatsoever.

## **ARTICLE 12 Miscellaneous**

12.1 Term. This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until December 31, 2055, unless amended as herein provided. After December 31, 2055, this Declaration, including all such covenants; conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by the Owners of at least eighty percent (80%) of the Lots then subject to this Declaration.

12.2 Amendment. This Declaration may be amended by recording in the Travis County Official Records an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the votes (in person or by proxy) of at least two-thirds (2/3) of the Members who are eligible to vote at a meeting duly called to vote on such matter. In addition, so long as there is a Class B Membership, Declarants, acting jointly, may amend this Declaration at any time. Any amendment shall be effective upon recordation in Travis County Official Records of an instrument executed and acknowledged by Declarants setting forth the amendment.

12.3 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and maybe delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

12.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

12.5 Exemption of Declarants: Primary Areas of Responsibility. Except as provided in Section 8.5 above (which requires the submission of plans to the ACC under limited circumstances where a Declarant

is building residential Improvements upon a Lot in a manner which would require a variance), notwithstanding any provision in this Declaration to the contrary, neither of Declarants nor any of a Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the ACC. Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit Declarants' rights to excavate and grade, to alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property. Furthermore, whenever this Declaration gives Declarants rights under Articles 3, 5, 6, 10 or 11 above or Section 12.8 below, only Standard Pacific may exercise that Declarant right within the Standard Pacific Primary Responsibility Area, and only Taro Properties may exercise that Declarant right within the Taro Properties Primary Responsibility Area.

12.6 Nonliability of ACC and Board Members. Neither the ACC, nor any member or agent thereof, nor the Board, nor any member thereof, shall be liable to the Association or to any Owner or to any other Person for any loss, damage, or injury arising out of their being in any way connected with the performance of the ACC's or the Board's respective duties under this Declaration, including without limitation the obstruction of views from Lots by any Improvements, approval or disapproval of Plans and Specifications, or construction of any Improvement within the Property, unless due to the willful misconduct, gross negligence or bad faith of the ACC or its member or the Board or its member as the case may be.

12.7 Assignment of Declarant Rights. Notwithstanding any provision in this Declaration to the contrary, Declarants, or either of them, may assign, in whole or in part, any of their privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of their privileges, exemptions, rights, and duties hereunder. Any assignment by a Declarant shall be effective only when an instrument executed and acknowledged by the particular Declarant evidencing such assignment is recorded in the Official Records of Travis County, Texas.

12.8 Compliance with the Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as from time to time amended. In addition to the Association's rights set forth in Section 7.4.3, if any Owner fails to comply with any of the Restrictions within ten (10) days after notice of such failure from either Declarant or the Board, such failure shall constitute a violation of this Declaration, and shall give Declarants the immediate right to impose fines for non-compliance, subject to Declarants' compliance with applicable provisions of the Texas Property Code. Further, such failure shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, which may be maintained by Declarants, the Board, or by any Owner, at the individual Owner's election and expense. Declarants may establish a schedule of fines for violations of the Restrictions, and may adjust the amounts set forth on such schedule from time to time. The schedule, as adjusted, shall be provided to an Owner upon such Owner's request. If any Owner defaults in the payment of a fine so assessed, such Owner shall be obligated to pay interest at the highest rate allowed by applicable laws then in effect on the amount of the fine, beginning ten (10) days after the date the fine is assessed (or if there is no such highest rate, then at the rate of 2% per month), together with all costs and expenses of collection, including reasonable attorneys' fees. Declarants further may charge a one-time late fee for delinquent payment of a fine in such amount as Declarants may from time to time deem appropriate. The payment of any fine so assessed, together with attorneys' fees, interest and/or late fees thereon, shall be secured by the Assessment Lien, and shall be subject to the same penalties for non-payment, including without limitation, judicial or nonjudicial foreclosure. Declarants may assign their rights under this Section to the Board at any time (and at such time as the Class B Membership

ceases, Declarants shall be deemed to have assigned their rights under this Section to the Board). Once the ten-day notice period of a violation has expired, each day during which a violation continues shall be a deemed a separate violation for which an additional fine may be imposed.

12.9 No Warranty of Enforceability. Declarants have no reason to believe that any of the covenants, terms and provisions of the Restrictions are or may be invalid or unenforceable for any reason or to any extent, but Declarants make no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. ***Any Owner acquiring a Lot in reliance on one or more of such covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to indemnify, and hold Declarants harmless, therefrom.***

12.10 Nonwaiver. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provisions of the Restrictions.

12.11 Construction. The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof. Whenever the phrase "from time to time" is used herein, such phrase shall be deemed to reflect Declarants' expectation that the matter or event to which such phrase refers may occur more than one time, and to mean each, and as many, times as. the event or matter so referred to in fact occurs.

12.12 Dispute Resolution. No Owner (a "Complaining Owner") may commence any judicial action or process against Declarants, the Board, the Association or the ACC (as applicable, the "Adverse Party") until and unless (i) the Complaining Owner notifies the Adverse Party that the Complaining Owner intends to institute a judicial action against the Adverse Party, and (ii) the Adverse Party does not elect to submit the dispute to non-binding mediation by notice to the Complaining Owner delivered within thirty (30) days after the Complaining Owner's notice of intent to institute judicial action. If no election is made within said thirty-day period, the Complaining Owner may proceed to institute a judicial action against the Adverse Party. If any Adverse Party elects to submit the dispute to non-binding mediation, however, the Adverse Party shall so notify the Complaining Owner within said thirty-day period, which notice of election shall include the name of three (3) qualified mediators acceptable to the Adverse Party, and no judicial action or process may be commenced against the Adverse Party until the mediation has concluded. A qualified mediator shall be any attorney-mediator with experience in mediating disputes involving real estate who does not reside within the Property, work for any party involved in the dispute or have any conflict of interest with any party involved in the dispute. The Complaining Owner shall have five (5) days within which to accept one of the three mediators so named in the notice of election and to so notify the Adverse Party. If the Complaining Owner does not timely notify the Adverse Party of the Complaining Owner's acceptance of a mediator, the Adverse Party may select one of the named mediators as the sole mediator for the mediation.

The mediation shall take place within thirty (30) days after the mediator is determined. The cost of such mediator shall be paid equally between the parties.