

AMENDMENT AND RESTATEMENT OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
*ROCKCREEK PLACE*  
Plano, Collin County, Texas

STATE OF TEXAS

KNOW ALL PERSONS BY THESE PRESENTS

COUNTY OF COLLIN

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (the 'declaration') is made by Nortam, Inc., a Texas corporation (the 'Declarant').

**WITNESSETH:**

WHEREAS, Declarant executed that certain Declaration of 'Covenants, Conditions and Restrictions for Rockcreek Place' recorded as Clerk's File 95-0003948 in the official records of Collin County, Texas (the 'Original Declaration') and by such instrument imposed certain restrictions as therein specified on the Rockcreek Place addition to the City of Plano, Collin County, Texas;

WHEREAS, Declarant is the owner of all those certain lots (hereinafter defined) located in *Rockcreek Place*, an addition to the City of Plano, County of Collin, State of Texas, according to the Final Plat (the 'Final Plat') thereof recorded as Document 9S-0015683 of the Plat Records of Collin County, Texas (all of the land in said Addition and the improvements now or hereafter situated thereon by or at the direction of the Declarant being hereinafter referred to as the 'Property'), with a copy of said Final Plat being attached hereto as Exhibit 'A' and made a part hereof for all purposes;

WHEREAS, Declarant desires to take advantage of the presently existing unique geographical features of the Property and proposes to establish and implement plans and aesthetic considerations in order to create a residential community on the Property and, to this end, desires to subject the Property to the covenants, conditions, restrictions, and easements hereinafter set forth (sometimes collectively referred to herein as the 'Covenants, Conditions and Restrictions');

WHEREAS, Declarant desires to impose said Covenants, Conditions and Restrictions on the Property and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the quality and distinction of the Property;

WHEREAS, Declarant has deemed it desirable to create a homeowners' association to own and maintain the Common Properties (hereinafter defined) and to which would be delegated and assigned the powers of administering and enforcing the covenants, conditions and restrictions contained herein and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused or will cause such homeowners' association to be incorporated under the Texas Non-Profit Corporation Act, under the name of Rockcreek Place Homeowners Association, Inc., (the 'Association').

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the Covenants, Conditions and Restrictions, as follows:

**ARTICLE I**  
**DEFINITIONS**

**Section 1.1**

The following words, when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

- (a) "Addition" shall mean and refer to *Rockcreek Place*, Plano, Collin County, Texas according to the Final Plat, as hereinabove described.
- (b) "Association" shall mean and refer to *Rockcreek Place Homeowner's Association, Inc.*
- (c) "Board of Directors" shall mean and refer to the Board of Directors of the Association.
- (d) "City" shall mean and refer to the City of Plano, Texas.
- (e) "Common Properties" shall mean all real property (including improvements thereon) now or hereafter owned or controlled by the Association for the common use and enjoyment of the Owners, including parking areas, walkways, perimeter landscaping, a mow strip situated along the southern boundary of the Property, and including easements appurtenant to the foregoing, and also a maintenance easement over and across the front yard of each Lot.
- (f) "County" shall mean and refer to Collin County, Texas.
- (g) "Declarant" shall mean and refer to Nortam, Inc., a Texas corporation and (i) its successors and assigns by operation of law, and/or (ii) any successor and/or assign which acquires one (1) or more undeveloped Lot from the Declarant for the purpose of development, and receives an assignment from Declarant of all of its rights hereunder as Declarant, by an instrument expressly purporting to do so.
- (h) "Lot" shall mean and refer to any one (1) of the enumerated plots or tracts of land shown upon the Final Plat, and "Lots" shall mean and refer to more than one (1) of same.
- (i) "Owner" shall mean and refer to each and every person or business entity (whether one or more), including Declarant (so long as applicable), that is a record owner of a fee or undivided fee interest in any Lot; provided, however, that (i) the term "Owner" and "Owners" shall not include any person or entity who holds a bona fide lien or interest in a Lot as security merely for the performance of an obligation (specifically including, but not limited to any mortgagee or trustee under a mortgage or deed of trust) unless and until such mortgagee, beneficiary or trustee has acquired title to such Lot pursuant to foreclosure or any proceeding in lieu thereof; and (ii) with respect to any matter requiring the vote, consent, approval or other action of an Owner, only one (1) vote per Lot shall be cast.

**ARTICLE II**  
**CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS**

**Section 2.1**

**Residential Use.** The Property shall be used for single-family residential purposes only. No building or other structure shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed three (3) stories in height, and a private garage as provided below, which residence shall be constructed to minimum Federal Housing Authority ("FHA") and Veteran's Administration ("VA") standards, unless otherwise approved in writing by the Committee (as hereinafter defined).

**Section 2.2** **Single Family Use.** Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unmarried persons living and cooking together as a single housekeeping unit, together with any household occupants.

**Section 2.3** **Garage Required.** Each residence shall have a garage suitable for two (2) standard size automobiles, which garage conforms in design and materials with the main structure.

**Section 2.4** **Restrictions and Re-subdivision.** None of the Lots shall be subdivided into smaller lots.

**Section 2.5** **Driveways.** All driveways shall be surfaced with concrete or similar substance approved by the Association.

**Section 2.6** **Uses Specifically Prohibited.**

- (a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Lot only in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of the residence on that Lot or on a different Lot as agreed to between the builder or contractor and the Declarant. No building material of any kind or character shall be placed or stored upon the Property until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Lot upon which the improvements are to be erected.
- (b) No boat, marine craft, aircraft, recreational vehicle, unattached pick-up camper, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any Lot or parked on any public street on the Property, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any residence unless completely concealed from public view. No such vehicle or equipment shall be used as residence or office temporarily or permanently. This restriction shall not apply to any vehicle machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity.
- (c) Trucks with tonnage in excess of one (1) ton and any vehicle with painted advertisement shall not be permitted to park overnight on the Property except those used by a builder during the construction of improvements.
- (d) No vehicle of any size which transports inflammatory or explosive cargo may be kept on the Property at any time.
- (e) No vehicles or similar equipment shall be parked or stored in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks and pick-up trucks with attached bed campers that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas.
- (f) No structure of a temporary character, such as a trailer, tent, shack, barn, or other outbuilding shall be used on the property at any time as a dwelling; provided, however, that any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period.
- (g) No oil drilling, oil development operation, oil refining, quarrying or mining operations shall be permitted in or on the Property, nor shall oils wells, tanks,

tunnels, miners, excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for natural gas or other minerals shall be erected, maintained or permitted on the Property.

- (h) No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the community. Notwithstanding anything seemingly to the contrary contained herein, no more than four (4) household pets will be permitted on each Lot. Pets must be restrained or confined by their owner to the back yard of the Lot inside a fenced area or within the residence erected thereon. It is the Owner's responsibility to keep the front of their Lot clean and free of pet debris. All animals must be properly tagged for identification.
- (i) No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or other disposal of any such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction, so long as construction progresses without undue delay.
- (j) No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence.
- (k) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence.
- (l) All antennas shall be located inside the attic of the main residential structure except that one (1) antenna may be permitted to be attached to the roof of the main residential structure so as to extend above said roof a maximum of five feet (5') and one (1) satellite dish or other instrument or structure may be placed in the backyard of each Lot so long as it is completely screened from view front any street, alley, park or other public areas and does not extend above the fence.
- (m) No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this paragraph shall prohibit a builder's temporary use of a residence as a sales office until such builder's last residence on the Property is sold. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art lessons so long as such activities do not materially increase the number of cars parked on the street or interfere with the other Owner's use and employment of their Lots and residences.

- (n) Any fence, wall, screen, sign, structure, foliage, hedge, tree, bush, shrub, berm, or any other item, either man-made or natural shall be erected, planted, or maintained so as to comply with the following standards.

Vision at all intersections where streets intersect at or near right angles shall be clear at elevation between two and one-half (2 ½) feet and nine (9) feet above the average gutter elevation, except single trunked trees, within a triangular area formed by extending the two curb lines from their point of intersection, forty-five (45) feet, and connecting these points with an imaginary line, thereby making a triangle.

- (o) No building previously constructed elsewhere shall be moved onto any Lot, except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment.
- (p) No sign of any kind shall be displayed to the public view on any Lot, except one (1) professional security service sign of not more than one square foot (1'), one (1) sign of not more than five square feet (5') advertising the property for rent or sale, or signs used by a builder to advertise the Property during the construction and sales period, each of which shall, in any event, comply with all statutes, laws or ordinances governing same. The Association and its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or otherwise in connection with such removal.
- (q) The drying of clothes in full public view is prohibited. The Owners and occupants of any Lots at the intersections of the streets or adjacent to parks, playgrounds or other facilities where rear yard is visible to full public view shall construct a fence or other suitable enclosure to screen from public view the equipment and other items which are incident to normal residences, such as clothes drying equipment, yard equipment, wood piles, storage piles and the like.
- (r) No Owner shall perform, fail to perform or permit anything to be done or not done on his Lot which would violate any laws, statutes, ordinances, or regulations of any kind or character.

**Section 2.7. Minimum Floor Area.** The total air-conditioned living area of the main residential structure constructed on each Lot, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than one thousand three hundred (1,300) square feet (1300) or the minimum habitable floor area as specified by the City, whichever is the greater.

**Section 2.8. Building Materials.** Except to the extent a higher percentage is required by the City, the total exterior wall area (as used herein the term "total exterior wall area shall exclude windows, doors and gables) of each building constructed or placed on a Lot shall be not less than seventy percent (70%), brick, brick veneer, stone, stone veneer, masonry or other material approved by the Association. Windows, doors, openings, gables or other areas above the height of the top of standard height first (1st) floor windows are excluded from the calculation of the total exterior wall area. Roofing shall be a substance acceptable to the City and shall have a minimum six foot (6') to twelve foot (12') roof pitch on the major portions of the building.

**Section 2.9. Side Line and Front Line Setback Restrictions.** No dwelling shall be located on any Lot nearer to the front line or nearer to the side Lot line than the minimum setback lines shown on the Final Plat or required by the City.

**Section 2.10. Fences and Walls.** Any fence or wall must be constructed of masonry, brick, wood or other material approved by the Association. No fence or wall shall be permitted to extend

nearer to any street than the front of any residence. However, all side yard fencing on corner Lots shall run parallel to the curb and may be placed up to the side Lot line and shall not extend beyond a point of five feet (5') behind the front of the residence on that side. Fences or walls erected by Declarant shall become the property of the Owner of the Lot on which the same are erected and as such shall be maintained and repaired by such Owner except as is provided in Articles IV and VII. Any fence or portion thereof that faces a public street shall be construed so that all structural members and posts will be on the side of the fence away from the street so that they are not visible from any public right-of-way. All fences visible to the public shall be kept neat, clean and in good repair. Any fence which is damaged, leaning, missing slats or otherwise not in good repair shall be immediately repaired. No portion of any fence shall extend more than eight feet (8') in height.

**Section 2.11. Mailboxes.** Mailboxes shall be standardized, and shall be constructed of masonry (brick, brick veneer, stone or stone veneer) and shall be of a design approved by the Association. If gangboxes are required by the U.S. Postal Service, the construction of same shall, to the extent allowed by the US. Postal Service, be brick or stone masonry.

**Section 2.12. Chimney Flues.** The area of a chimney flue that faces the front street (and the side street for corner Lots) shall be enclosed one hundred percent (100%) in brick, brick veneer, stone, stone veneer, except for aide facing roof, and except for chimney flues located along the rear of any house.

**Section 2.13. Window, and Skylights.** Windows, jambs and mullions shall be composed of anodized aluminum or wood. Street-front elevations shall have baked-on painted aluminum divided light window (i.e., no mill finish).

### ARTICLE III ARCHITECTURAL CONTROL

**Section 3.1** **Appointment.** Architectural control of the lots shall be the responsibility of the Board of Directors. The Board of Directors shall use good faith and diligent efforts to promote and ensure a high level of taste, design, quality, harmony and conformity through the Property consistent with this Declaration.

**Section 3.2** **Authority.** No building, wall or other structure shall be commenced, erected, placed, maintained or altered on any Lot, nor shall any exterior painting (other than repainting a structure the same color) of, exterior addition to, or alteration of, such items be made until all plans and specifications and a plot plan have been submitted to and approved in writing by the Board of Directors as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on the Property; and
- (c) the other standards set forth within this Declaration (and any amendments herein) or matters in which the Board of Directors has been vested with the authority to render a final interpretation and decision.

The Board of Directors is authorized and empowered to consider and review any and all aspects of construction and landscaping which may, in the reasonable opinion of the Board of Directors, adversely affect the living enjoyment of one (1) or more Owners or the general value of the Property. In considering the harmony of external design between existing structures and the proposed building being erected, placed or altered, the Board of Directors shall consider only the general appearance of the proposed building as that can be determined from front, rear and side elevations on submitted plans.

**Section 3.3** **Procedure for Approval.** Final plans and specifications shall be submitted in duplicate by certified mail, return receipt requested or hand delivered to the Board of Directors. The plans and specifications shall show the nature, kind, shape, height, materials and location of all landscaping and improvements. The documents shall specify any requested variance from setback lines, garage location or any other requirement set forth in this Declaration. The Board of Directors is authorized to request the submission of samples of proposed construction materials and such other information as they reasonably deem necessary to make their determination. At such time as the plans and specifications meet the approval of the Board of Directors, one complete set of plans and specifications will be retained by the Board of Directors and the other complete set of plans shall be marked "Approved," signed by a representative of the Board of Directors and returned to the Lot Owner or his designated representative. If disapproved by the Board of Directors, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a representative of the Board of Directors. Any modification of the approved set of plans and specifications must again be submitted to the Board of Directors for its approval. The Board of Directors' approval or disapproval, as required herein, shall be in writing. In no event shall the Board of Directors give verbal approval of any plans. If the Board of Directors falls to approve or disapprove any such plans and specifications or modification thereto within thirty (30) days after the date of submission, written approval of the matters submitted shall not be required and compliance with this Section 3.4 shall be deemed to have been completed. In case of a dispute about whether the Board of Directors responded within such time period, the person submitting the plans shall have the burden of establishing when the Board of Directors received the plans. The Board of Director's receipt of the plans may be established by a signed certified mail receipt.

**Section 3.4** **Standards.** The Board of Directors shall have sole discretion with respect to taste, design and all standards specified herein. One objective of the Board of Directors is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built on the Property. The Board of Directors shall also have the authority to require that the colors of roofing materials be earth tones and generally to require that any plans meet the standards of the existing improvements on the Property. The Board of Directors may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and which carry forward the spirit and intention of this Declaration.

**Section 3.5** **Liability of Board of Directors.** The Board of Directors, and its officers, directors, employees and agents, shall have no liability whatsoever for decisions made by the Board of Directors so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the plans or the site plan submitted to the Board of Directors shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Board of Directors shall have no obligation to check for errors in or omissions from any such plus or to check for such plans' compliance with the general provisions of this Declaration, or any codes, ordinances, regulations or other laws,

whether statutory or not, and whether the same relate to Lot lines, building lines, easements or any other issue.

**Section 3.6.** **Special Rights of Declarant.** Notwithstanding anything to the contrary contained herein, any Lot owned by Declarant shall not be subject to the provisions of this Article III and Declarant shall not be required to submit plans and specifications, etc. to the Board of Directors nor obtain the consent, permission or approval of the Board of Directors for the matters otherwise required pursuant to this Article III, and the consent, permission or approval of the Board of Directors shall be deemed given for plans and specifications, plot plans, and the like to be used by Declarant in the construction of any residence on any Lot owned by Declarant.

#### **ARTICLE IV** **SPECIAL FENCING AND LANDSCAPING**

**Section 4.1.** **Fences, Walls and Screening Landscaping.** Declarant and/or the Association shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls and/or screening landscaping within (a) that portion of any Lot situated along the perimeter of the Addition, as shown on the Final Plat, or (b) on any portion of the Property not comprising any portion of a Lot or dedicated street or alley. Any fence, wall or sprinkler system shall be the property of the Owner of the Lot on which such fence, wall or sprinkler system is erected or installed subject to the easements and rights of Declarant and the Association as set forth in this Declaration.

**Section 4.2.** **Landscaping.** Declarant and/or the Association shall have the right to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Property not comprising any portion of a Lot or a dedicated street or alley or on any portion of a Lot over which an easement has been reserved for the benefit of the Association.

**Section 4.3.** **Easement.** Declarant and the Association shall have, and hereby reserve, the right and easement to enter upon any portion of the Property for the purpose of exercising the discretionary rights set forth in this Article IV, except that as to any Lot comprising the Property, Declarant and the Association shall only have the right to enter the portion of any Lot situated along the perimeter of the Addition, as shown on the Final Plat and such portion of any Lot as is necessary to maintain the front yard thereof.

**Section 4.4.** **Declarant's and the Association's Discretion.** Notwithstanding any provisions herein to the contrary, except for Article VII, neither Declarant nor the Association shall ever be obligated to erect, install, maintain, repair or replace any fences, walls, sprinkler systems, grading, planting or landscaping on the Property.

**Section 4.5.** **Fifteen (15) Year Limitation.** The provisions of this Article IV regarding Declarant's rights shall terminate and be of no farther force and effect from and after that date which is fifteen (15) years after the recording of this Declaration. The rights of the Association shall continue throughout the term hereof.

#### **ARTICLE V** **GENERAL PROVISIONS**

**Section 5.1.** **Easements.** Easements for the installation and maintenance of utilities and drainage facilities shall be reserved as shown on the Final Plat. Declarant and the Association

reserve the right to make minor changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements. By acceptance of a deed to any Lot, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain in a neat and clean condition any easement which may traverse a portion of the Lot.

**Section 5.2. Recorded Final Plat.** All dedications, limitations, restrictions, and reservations that are shown on the Final Plat shall be deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed by Declarant, conveying Lots on the Property, whether specifically referred to therein or not.

**Section 5.3. Lot Maintenance.** Each builder of a residence upon each Lot shall, upon or before the first occupancy of a house, establish grass front, and side-yards, shall plant a minimum of eight (8) two (2) gallon shrubs, and shall, if trees do not already exist in the front yards of each Lots, plant a minimum of two (2) two inch (2") caliper trees, and each Owner and occupant of each Lot shall thereafter maintain the yards in a sanitary and attractive manner and shall edge the street curbs that run along the boundary lines of the Property. Grass, weeds and vegetation on each Lot must be kept mowed at regular intervals so as to maintain the Lot in a neat and attractive manner. No vegetables shall be grown in any portion of a Lot yard that faces a street or is not screened by fencing built in accordance with the terms hereof. No Owner shall permit weeds or grass to grow to a to a height of greater than six inches (6") upon his property.

**Section 5.4 Maintenance of Improvements.** Subject to the provisions of Article IV and Article VI, each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his Lot in good condition and repair, and shall replace worn and rotten parts, and shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate in an unattractive manner.

**Section 5.5 Special Enforcement Rights of the Association.** In the event that an Owner fails to comply with the provisions of this Declaration, including but not limited to the provisions of Sections 5.3 and 5.4 the Association shall have the right to give such Owner notice of such failure. If the Owner shall not have corrected such failure within fourteen (14) days after the giving of such notice, the Association shall have the right to send a second notice of failure to such Owner. If the Owner shall not have corrected such failure within seven (7) days after the giving of such second notice, the Association shall have the right, but not the obligation, to bring the Lot, and any improvements thereon, into full compliance with this Declaration. All costs and expenses incurred by the Association in connection with correcting any such failure shall be borne by the Owner. If any Owner does not promptly reimburse the Association for all such costs and expenses, the Association shall have the right to assess the Owner for same, such assessment being a special individual assessment under the provisions of Section 8.5 below.

**Section 5.6 Mortgages.** It is expressly provided that the breach of any of the conditions contained herein shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to Lots acquired by foreclosure, trustee's sale or otherwise, as to any breach occurring after such acquisition of title.

**Section 5.7 Term.** These Covenants, Conditions and Restrictions shall run with and bind the Property and shall remain in full force and effect for a term of twenty (20) years from the date this Declaration is recorded in the appropriate Real Property Records of Collin County Texas

and shall automatically be extended for successive ten (10) year periods, unless amended as provided herein.

**Section 5.8** **Severability.** If any provision herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final (i.e., non-appealable) judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

**Section 5.9** **Binding Effects.** These Covenants, Conditions and Restrictions and the provisions hereof are made for the mutual benefit of, and are binding upon each and every person acquiring any part of the Property, it being understood that such Covenants, Conditions, and Restrictions and the provision hereof are not for the benefit of any land except that which is a part of the Property. This Declaration, when executed, shall be filed of record in the appropriate Real Property Records of Collin County Texas.

**Section 5.10** **Enforcement.** The Association, as well as each and every Owner, shall have the right to have these Covenants, Conditions, and Restrictions faithfully carried out and performed with reference to each and every Lot, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each Lot, without reference to when it was sold, the right to have such Covenants, Conditions and Restrictions strictly complied with, such right to exist with the Owner of each Lot and to apply to all other Lots whether owned by the undersigned, or its successors, or assigns. Failure by the Owner, including Declarant, or the Association, to enforce any covenant, condition, agreement or restriction herein contained on any one occasion shall in no event be deemed a waiver of the right to do so thereafter.

**Section 5.11** **Addresses.** Any notices or correspondence to an Owner shall be addressed to the street address of the Lot. Any notices or correspondence to the Association shall be addressed to the address shown opposite the signature of Declarant below or to such other address as is specified by the Association pursuant to an instrument recorded in the appropriate Real Property Records of the County.

**Section 5.12** **Amendment.** At any time, the Owners of fee simple title to sixty-five percent (65%) of the Lots (as shown by the appropriate Real Property Records of the County) may amend these Covenants, Conditions and Restrictions and/or any provision(s) set forth herein by executing an instrument containing such amendments(s) and recording same in the appropriate Property Records of Collin County, Texas, provided, however that for the period which expires five (5) years from the date of recordation of this Declaration, no such amendment shall be valid or effective without the joinder of Declarant.

**Section 5.13** **Transfer Under Deed of Trust.** Upon any transfer of the Declarant's interest in and to the Property, or any part thereof, under the terms of any deed of trust lien upon the Property, whether voluntary or involuntary, by foreclosure, deed in lieu of foreclosure or otherwise, all rights, title and interests of Declarant under this Declaration, shall be transferred to and devolve upon the party to whom the Property or any part thereof, is hereby conveyed.

**Section 5.14** **NOTICE O TRANSFER.** IF AT ANY TIME A LOT IS SOLD, THE NEW OWNER SHALL PROMPTLY NOTIFY THE ASSOCIATION OF THE NAME AND ADDRESS (IF OTHER THAN THE LOT) OF THE NEW OWNER.

**Section 5.15** **No Liability for Trespass.** Whenever the Association, the Board of Directors or the Declarant exercises any right hereunder and in connection therewith enters upon any Lot, such parties shall not be liable for trespass upon such Lot.

**ARTICLE VI**  
**MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 6.1.** **Membership.** Every owner of a Lot shall automatically be a member of the Association. Membership shall be appurtenant to each Lot and may not be separated from Ownership of any Lot which is subject to assessment hereunder.

**Section 6.2** **Classes of Membership.** The Association shall have two (2) classes of voting membership:

**CLASS A.** Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership; provided, however, that in the event that more than one (1) person holds such interest or interests in any Lot, even though all such persons shall be Members, there shall be only one (1) vote for such Lot, which shall be exercised as they, among themselves, determine (but in no event shall more than one (1) vote be cast with respect to any such Lot). **CLASS B.** Class B Member(s) shall be the Declarant. Until such time as the Declarant has sold Lots constituting at least ninety percent (90%) of all of the Lots in the Property, the Class B Member shall have the sole right to elect the Board of Directors of the Association. Control of the Association shall be vested in the Owners not later than sixty (60) days after completion of transfer to Class A Members of title to Lots comprising at least ninety percent (90%) of the Lots in the Property. The Declarant shall at all times have four (4) votes for each Lot it owns.

**Section 6.3.** **Quorum and Notice Requirements**

**6.3.1.** Except as expressly provided herein to the contrary, any action of the Members shall require the assent of two-thirds (2/3) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance and shall set forth the purpose of such meeting.

**6.3.2.** The quorum required for any action referred to in Section 6.3.1 shall be determined as set forth in this Section 6.3.2. The first time a meeting is called, whether regular or special, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the Association's Members, without regard to class, shall constitute a quorum. If the required quorum is not present at the meeting, one (1) additional meeting may be called, subject to notice requirement hereinabove set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting, or the process must then be repeated.

**6.3.3.** Any provision of this Declaration to the contrary notwithstanding, any action

referred to in Section 6.3.1 may be taken with the assent given in writing and signed by the Members entitled to cast two-thirds (2/3) of all of the votes of the Association's Members, at a duly called and conducted meeting of the Members.

**6.3.4.** Except as specifically set forth in this Declaration, notice, voting and quorum requirement of all action to be taken by the Association shall be set forth in its Articles of Incorporation (herein so called) and Bylaws (herein so called), as same may be amended from time to time.

**Section 6.4.** **Right of Inspection.** Each Owner shall have the right to inspect the books of the Association, during normal business hours and at the place where such books are kept, and upon reasonable prior notice to the Association.

## **ARTICLE VII** **THE COMMON PROPERTIES**

**Section 7.1.** **Initial Common Properties.** The Common Properties shall consist of real property and easement rights reserved by the Declarant and conveyed to the Association over the Property. As the City has not agreed to maintain same, it shall be the responsibility of the Association to maintain same.

**Section 7.2.** **Additional Common Properties.** Additional property may be added to the Common Properties hereunder only upon the approval of the affirmative vote of two-thirds (2/3) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose, provided, however that such additional property may only be added to the Common Properties prior to the conveyance of the First Lot to an Owner.

**Section 7.3.** **Easement Rights to the Common Properties.** 'The Declarant shall dedicate and convey the easement rights to the Common Properties to the Association free and clear of all encumbrances and lien other than the lien of current taxes and assessments not in default and utility and other easements and mineral interest outstanding and of record in Collin County, Texas, prior to the date of the conveyance of the first Lot to an Owner.

**Section 7..** **Member's Easements of Enjoyment.** Subject to the provisions of Section 7.3, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have and share a non-exclusive right and easement of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot; PROVIDED, HOWEVER, such easement shall not give such person the right to use the Common Properties in a manner inconsistent with the use being made by the Association nor to make alterations, additions or improvements to the Common Properties.

**Section 7.5.** **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following;

**7.5.1** The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties.

**7.5.2** Subject to the affirmative vote of two-thirds (2/3) of the votes of the Association's Member's who are voting in person or by proxy at a meeting dully called for such purpose, to borrow money for the purpose of improving the Common Properties and Facilities and in aid thereof to mortgage the Common Properties, and the rights of such mortgage in the Common Properties shall be subordinate to the rights of the Owners hereunder;

- 7.5.3** The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;
- 7.5.4** The right of the Association, as provided in its Bylaws to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Properties and/or common facilities for any period during which any assessment against a Lot resided upon by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the rules and regulations;
- 7.5.5** The right of the Association to charge reasonable admission and other fees for use of recreational facilities in the common Properties, if and when such recreational facilities are constructed; and
- 7.5.6** Subject to the affirmative vote of two-thirds (2/3) of the votes of the Association's Members, who are voting in person or by proxy at a meeting dully called for such purpose, the right of the Association to acquire additional Common Properties as the Members of the Association may determine.

**Section 7.6. Dedication of the Common Properties.** The Board of Directors of the Association (herein referred to sometimes as the 'Board' or 'Board of Directors') shall have the right to dedicate or transfer all or any part of the Common Properties (excluding the easement rights over the front yard of any Lot) to any public agency, authority or utility for such purposes and upon such conditions at the Board of Directors may determine.

## **ARTICLE VIII** **COVENANT FOR MAINTENANCE ASSESMENTS**

**Section 8.1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association) the following: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (c) individual special assessments levied against individual Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner, his or her tenant(s) occupying his or her Lot, if applicable, and their respective family, agents, guests and invitees, or for costs incurred by the Association resulting from any Owner failing to comply with terms and provisions hereof, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessments to be collected by the Association shall constitute the maintenance fund of the Association. The annual, special capital, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The annual assessment shall be payable in one annual installment as provided in this Article VIII.

**Section 8.2. Purpose of Assessments.** The assessments levied by the Association shall be used: (a) for the purpose of promoting the recreation, health, safety and welfare of the residents of the

Property, and in particular for the improvement and maintenance of the Common Properties or any other properties, services and facilities devoted to this purpose and comprising or directly relating to the use and enjoyment of the Common Properties, including, but not limited to the payment of taxes on and insurance in connection with the Common Properties, and the repair, replacement and additions thereto; (b) for paying the cost of labor, equipment (including the expense of leasing any equipment), and materials required for, and management and supervision of, the Common Properties; (c) for carrying out the duties of the Board of Directors of the Association as set forth in Article IX hereafter including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting of any of the Common Properties; (d) for paying the cost of maintenance of the monument sign for the Property in the event the appropriate governmental authority refuses to maintain the same; and (e) for carrying out the purposes of the Association as stated in its Article of Incorporation.

**Section 8.3. Basis and Amount of Annual Assessments.**

**8.3.1.** The maximum annual assessment will be Four Hundred and Fifty Dollars (\$450.00) for each Lot. The Board of Directors may fix the annual assessment at any amount equal to or less than the maximum annual assessment for that year, as hereinabove provided. Commencing with the year beginning January 1, 1996, and each year thereafter, the Board of Directors may set the amount of the maximum annual assessment for the following year for each Lot, provided that the maximum annual assessment may not be increased more than twenty-five percent (25%) above the maximum annual assessment for the previous year without a vote of the membership taken in accordance with the provisions of Section 8.3.2. The maximum assessment of each Lot on which construction of a residence has not begun as of the beginning of such year shall be an amount equal to fifty percent (50%) of the maximum amount assessed against each lot as provided above. The Board of Directors may fix the annual assessment at any amount equal to or less than the maximum annual assessment for that year, as hereinabove provided.

**8.3.2.** Commencing with the year beginning January 1, 1996, and in each year thereafter, the Board of Directors may set the maximum annual assessment for the following year for each Lot at an amount more than twenty-five percent (25%) above the maximum annual assessment for the previous year, PROVIDED THAT any such increased assessment shall be approved by the affirmative vote of two-thirds (2/3) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose.

**Section 8.4. Special Assessments.** In addition to the annual assessment authorized by Section 8.3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, maintenance, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall be approved by the affirmative vote of two-thirds (2/3) of the votes of the Association's Members who are voting in person or by proxy at a meeting duly called for such purpose.

**Section 8.5. Special Individual Assessment.** In the event that any Owner falls to comply with the provisions hereof and the Association incurs any cost or expense in either enforcing the provisions hereof against any such Owner or in carrying out the obligations of any such Owner, the Association shall have the right to assess against such Owner a special individual assessment in the amount of all such costs incurred by the Association, such

special individual assessment to be paid by the applicable Owner upon demand by the Association.

**Section 8.6. Uniform Rate of Assessments.** Both annual and special assessments (excepting therefrom special individual assessments) must be fixed at a uniform rate for all Lots.

**Section 8.7. Date of Commencement and Due Dates of Assessments.** The annual assessment provided for herein shall commence as to all Lots upon conveyance of the Common Properties to the Association and shall be payable in advance, on the first (1<sup>st</sup>) business day of each January. The due date or dates, if it is to be paid in installments, of any special assessment under Section 8.4 or of any special individual assessment under Section 8.5 shall be fixed in the respective resolution authorizing such assessment.

**Section 8.8. Duties of the Board of Directors with Respect to Assessments.**

**8.8.1.** The Board of Directors of the Association shall fix the amount of the assessment against each Lot at least thirty (30) days in advance of each assessment period and shall, at that time, prepare a roster of the lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

**8.8.2.** Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.

**8.8.3.** The Board of Directors shall, upon demand, at any time furnish to any Owner liable for said assessments a certificate in writing signed by an officer or agent of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

**Section 8.9. Deed of Trust Assessment Lien to Secure Charges and Assessments.** All regular and special maintenance charges or assessments, and the special individual assessments as hereinabove provided for, shall constitute and be secured by a separate and valid and subsisting deed of trust assessment lien, hereby created and fixed and which shall exist upon and against such lot and all improvements and fixtures thereon, for the benefit of the Association, and all members thereof. Notwithstanding any other provision hereof, the lien to secure the payment of assessments or any other sums due hereunder and any other lien which the Association may have on any Lot pursuant to this Declaration shall be subordinated to the lien or equivalent security interest of any first lien mortgage or deed of trust on any Lot. Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust or other security instrument, or through court proceedings in which the Association has been made a party, shall extinguish the liens securing maintenance charges or assessments or any other sums due hereunder which became due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay maintenance charges or assessments which become due prior to such foreclosure be extinguished by any foreclosure, nor shall the lien for future assessments or charges be affected in any manner.

**Section 8.10. Effect of Nonpayment of Assessment.** If any regular or special charge or assessment or special individual assessment is not paid within thirty (30) days from the due date thereof, the same shall bear interest from the due date until paid at the highest non-usurious rate allowed under the laws of the State of Texas, or other applicable law, or if no such limitation is imposed then at the rate of eighteen percent (18%) per annum, and if placed

in the hands of an attorney for collection or if collected through probate or other judicial proceedings, there shall be reimbursed to the Association reasonable attorneys' fees.

**Section 8.11** **Collection and Enforcement.** The Association shall have a lien on each Lot against the Owner of said lot, securing payment of any regular or special charge or assessment, together with interest thereon as provided herein and reasonable attorneys' fees and costs incurred in the collection of same and the enforcement of said lien. The Board of Directors shall take such action as it deems necessary to collect assessments and may settle and comprise the same if it is in the best interest of the Association. Such liens shall be effective as and in the manner provided for herein and shall have the priorities established in the covenants, conditions and restrictions contained herein. The Board of Directors may bring an action at law against any Owner personally obligated to pay an assessment or foreclose the lien against such Owner's Lot, or both, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Board of Directors of the Association or its agent this right and power to bring all actions against such Owner personally for collection of such assessments as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including but not limited to, non-judicial foreclosure pursuant to Texas Property Code Section 51.002 in force and effect on the date of this Declaration, or in accordance with the prescribed manner for foreclosure of deed of trust liens provided by any future amendment to such Section 51.002 or any other statute or article enacted in substitution thereof, and such Owner thereby expressly grants to the Board of Directors a power of sale in connection with said lien. The Association is hereby appointed trustee, unless and until the Board of Directors shall designate a substitute or successor trustee, as hereinafter provided, to post the required notices as provided by law and conduct such foreclosure sale. The lien provided for in this Section shall be in favor of the Association and shall be for the common benefit of all Owners and shall have the same effect as though each Owner had expressly granted to the Association for the benefit of the Owners a deed of trust lien as well as a security interest in said Lot to secure the payment of the assessments provided for herein. In addition to such notices as required by the aforesaid statute, the trustee shall mail to the Owner or Owners and mortgagee of a Lot for which the assessment has not been paid, a copy of the notice of trustee sale at or before the time of posting same by U.S. Postal Service, postage paid, certified, return receipt requested, at the Lot or such other address as the Board has been advised in writing for receipt of notices under this Declaration. At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of its lien, together with costs and attorneys' fees, and to apply as a cash credit against its bid all sums due the association covered by the lien foreclosed. From and after any such foreclosure, the former Owner or Owners, their heirs and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the property so sold to the purchaser at such sale, and in the event of their failure to surrender possession of said property upon demand, the purchaser, or his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of said property in the Justice of the Peace Court in the Justice Precinct in which such Lot, or any part thereof, is situated. The Board of Directors in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act in the place of the trustee who posted the original notices without any formality other the designation in writing of a substitute or successor trustee; and the authority hereby conferred by the Board of Directors shall extend to the appointment of other successor and substitute trustees successively until delinquent assessment or assessments have been paid in full, or until said property is sold, and each

substitute and successor trustee shall succeed to all the rights and powers of the original trustee appointed by the Board of Directors or its agents.

**Section 8.12** **Omission of Assessments.** The omission of the Board of Directors, before the expiration of any year, to fix the assessments hereunder for that next year, shall not be deemed a waiver or modification in any respect of the provision of this Declaration, or release of any Owner from the obligations to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment filed for the preceding year shall continue until a new assessment is filed.

**Section 8.13.** **Maintenance Fund: Working Capital Fund.**

**8.13.1** The Association may establish and maintain a maintenance fund for the periodic maintenance of the Common Properties. Subject to the provisions of Section 8.3 above, the Board may at any time ratably increase or decrease the amounts or regular annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including provisions of reasonable reserves. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs which are the Association's obligations.

**8.13.2** The Association may establish a working capital fund for the initial operation of the Common Properties in such amount as the Board shall determine.

**Section 8.14** **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

**8.14.1** All properties dedicated and accepted by the local public authority and devoted to public use; and

**8.14.2** All Common Properties (except for the front yard of the Lots).

**ARTICLE IX**  
**GENERAL POWERS OF THE**  
**BOARD OF DIRECTORS OF THE ASSOCIATION**

**Section 9.1.** **Power and Duties.** The Board, for the benefit of the Property and the Owners, shall have the right to do all things which are necessary or advisable in connection with enforcing the provisions of this Declaration. Such powers shall include, but shall not be limited to, the following:

**9.1.1** Paying assessments and charges for sewer, water, and garbage pickup for services for the Properties, installation and maintenance charges for street lighting for the Property, and taxes, assessments and other charges which shall properly be assessed or charged against the Common Properties.

**9.1.2** Performing exterior maintenance on the Common Properties, which may include, without limitation: (a) maintenance of any driveways, private roadways, jogging paths, walkways, front yards, and sidewalks; (b) maintenance of exterior grounds, including care of trees, shrubs, and grass, lighting systems, sprinkler systems (if installed) and similar facilities on the Common Properties; and (c) maintenance of the entry monument(s) and any screening walls or fences constructed around the perimeter of the Property; PROVIDED, FURTHER, that in the event that the need for maintenance or repair is caused through the willful or negligent act of any owner, his family, his guests or invitees, the cost of such maintenance or repairs shall be added to become a part of the assessment to which such Lot is subject.

**9.1.3** Providing all utility service for the Common Properties and the furnishing and

upkeep of any desired personal property for use in the Common Properties.

- 9.1.4** Purchasing a policy or policies of insurance insuring the Association against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association, in an amount not less than \$300,000.00 to indemnify against the claim of one person, \$500,000.00 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$50,000.00 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured; provided, that under no circumstances shall the Board be authorized to provide or pay for fire, casualty, or other insurance insuring the interest of any Owner in his Lot.
- 9.1.5** Executing all re-plats of the Property and to execute all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.
- 9.1.6** Borrowing funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.
- 9.1.7** Entering into contracts, maintaining one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association, expressly including the power to enter into management and maintenance contracts.
- 9.1.8** Protecting or defending the Common Properties from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.
- 9.1.9** Making reasonable rules and regulations for the operation of the Common Properties and amending them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the vote of two-thirds (2/3) of the Members, or, with respect to a rule applicable to less than all of the Property, by the vote of two-thirds (2/3) of the Members in the portions affected (without limiting the generality of foregoing language, the rules and regulations may provide for limitation on use of the Common Properties during certain periods by youthful persons, visitors or otherwise).
- 9.1.10** Adjusting the amount, collecting and using any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, assessing the Members in proportionate amounts to cover the deficiency.
- 9.1.11** Enforcing the provisions of this Declaration and any rules made hereunder and enjoining and seeking damages from any Owner for violation of such provisions or rules.
- 9.1.12** Exercising the rights granted to the Association in Articles II, III, IV and V and this Article IX.

**Section 9.2.** **Owner's Obligation to Repair.** Except for those portions of each lot constituting the Common Properties, each Owner shall at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair. In the event that any Owner shall fail to maintain and repair his Lot and such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder or by law, and without waiving any of said alternative remedies, shall have the right, subject to the notice and cure provisions of Section 5.5 above, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon; and each

Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association the cost thereof immediately upon demand, and failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessments hereunder when due.

**Section 9.4** **Maintenance Contacts with Owners.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by or for the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof (including, but not limited to, the maintenance and repair of fences owned by any such Owner), such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and to the best interest of the Association; provided, however, that same must be commercially reasonable in all circumstances.

**ARTICLE IX**  
**ORIGINAL DECLARATION SUPERSEDED**

**Section 9.1.** **Original Declaration Superseded.** This Declaration shall supersede and replace the original Declaration for all purposes with the same force and effect as though this Declaration had been executed and recorded instead of the original Declaration.