

TOWN OF TROPHY CLUB, TEXAS

Fox Pointe

ORDINANCE NO. 98-21 P & Z

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TROPHY CLUB, TEXAS, AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE TOWN OF TROPHY CLUB AS HERETOFORE AMENDED, SO AS TO PROVIDE FOR "PD PLANNED DEVELOPMENT DISTRICT 18 FOR SINGLE FAMILY RESIDENTIAL USES" ON A TRACT OF LAND MORE SPECIFICALLY DESCRIBED HEREIN; CORRECTING THE OFFICIAL ZONING MAP; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a change in the classification of a zoning district has been requested by M&M Development, Inc. for the property more specifically described in Exhibit A attached hereto; and

WHEREAS, the Planning and Zoning Commission of the Town of Trophy Club and the governing body of the Town of Trophy Club, in compliance with the laws of the State of Texas and the ordinances of the Town of Trophy Club, have given the requisite notices by publication and otherwise, and have held public hearings and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof, the governing body in the exercise of its legislative discretion has concluded that the Comprehensive Zoning Ordinance of the Town of Trophy Club should be amended as follows:

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TROPHY CLUB, TEXAS:

Section 1. That the Comprehensive Zoning Ordinance of the Town of Trophy Club, Texas as heretofore amended, be and the same is hereby amended by providing a change in zoning from "R15 Single Family Residential District Classification" to "PD Planned Development District 18 for Single Family Residential Uses" on an 11.589 acre tract of land more particularly described on Exhibit A attached hereto.

Section 2. That the property described in Exhibit A shall be used only in the manner and for the purposes provided for in the Comprehensive Zoning Ordinance of the Town of Trophy Club as heretofore amended, and in compliance with the Overall Development Plan attached hereto as Exhibit B, and the Development Standards attached hereto as Exhibit C, provided that a detailed Site Plan shall be submitted for approval prior to the approval of any preliminary plat on the subject property.

Section 3. That the Declaration of Covenants and Restrictions for the Fox Pointe Subdivision are hereby approved and attached hereto and labeled as Exhibit D.

Section 4. That the official zoning map of the Town be corrected to reflect the changes in zoning described herein.

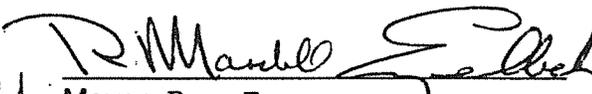
Section 5. Any person, firm or corporation violating any of the provisions of this ordinance shall be punished by a penalty of fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense and each and every day such offense shall continue shall be deemed to constitute a separate offense.

Section 6. If any section or provision of this ordinance or the application of that section or provision to any person, firm, corporation, situation or circumstance is for any reason judged invalid, the adjudication shall not affect any other section or provision of this ordinance or the application of any other section or provision to any other person, firm, corporation, situation or circumstance, nor shall adjudication affect any other section or provision of the Comprehensive Zoning Ordinance of the Town of Trophy Club, Texas, and the Town Council declares that it would have adopted the valid portions and applications of the ordinance without the invalid parts and to this end the provisions of this ordinance shall remain in full force and effect.

Section 7. That all ordinances of the Town of Trophy Club in conflict with the provisions of this ordinance be and the same are hereby repealed to the extent of that conflict.

Section 8. That this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance as the law in such case provides.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF TROPHY CLUB, TEXAS, this 21st day of July, 1998.


Mayor Pro Tem
Town of Trophy Club, Texas

ATTEST:


Town Secretary
Town of Trophy Club, Texas

[S E A L]

APPROVED AS TO FORM:


Town Attorney
Town of Trophy Club, Texas

EXHIBIT C

DEVELOPMENT STANDARDS SINGLE FAMILY REGULATIONS

PD18

- A. **GENERAL PURPOSE:** The purpose of this PD Ordinance is to allow single family detached dwellings on lots ranging in size from ten thousand (10,000) square feet to twelve thousand plus (12,000±) square feet together with allowed incidental and accessory uses, in order to provide a viable and compatible neighborhood for the Town of Trophy Club.

Fox Pointe is a residential neighborhood adjacent to Section 13 and Eagle's Ridge subdivisions. It is a transition zone from 10,000 square feet lots to 12,000 square feet lots.

The site slopes to the north, west and south from a high point on the east property line. The land plan allows for the excellent views of the Lake Grapevine area to be preserved.

The purpose for the PD Ordinance Guidelines is to establish a framework for development, which provides for the protection of the existing site characteristics. Enforcement of the design guidelines will insure the protection of the design intent and will optimize the preservation of the site.

- B. **USES:** In "Fox Pointe" no land shall be used and no building shall be installed, erected for or converted to any use other than as hereinafter provided.

1. **Permitted Uses:** The following uses shall be permitted as principle uses:
 - (a) Single Family Detached Dwellings.
 - (b) Public Roadways constructed to Town standards.
 - (c) Public and Private Utilities.
2. **Accessory Uses:** Accessory uses shall be permitted in accordance with the regulations provided in Section 35 of The Comprehensive Zoning Ordinance No. 94-09.
3. **Limitation of Uses:**
 - (a) All applicable ordinances of the Town of Trophy Club shall govern any uses allowed unless otherwise expressed herein.
 - (b) Any use not expressly permitted, or allowed by permit, or as provided by this district, is prohibited.

- C. **BUILDING PERMIT REQUIREMENTS:** No application for a building permit for the construction of any structure shall be approved unless a plat, meeting all requirements of the

Town of Trophy Club has been approved by the Town Council and recorded in the official records of Denton County, Texas.

D. HEIGHT REGULATIONS: Except as provided by Section 36 of the Comprehensive Zoning Ordinance 94-09, no building shall exceed thirty-five (35) feet or two and half (2 1/2) stories in height.

E. AREA REGULATIONS: The following minimum standards shall be measured from property lines:

1. **Lot Size:** Lots for any permitted single family use shall have a minimum area of ten thousand (10,000) square feet.
2. **Minimum Open Space:** All areas not devoted to buildings, paving or swimming pool shall be devoted to turf or landscaping.
3. **Maximum Building Coverage:** The combined first floor area covered by all principal and accessory buildings or structures shall not exceed forty-five (45) percent of the total lot area. Swimming pools and spas are not included in determining maximum building coverage.
4. **Minimum Floor Area:** The minimum square footage of a dwelling unit, exclusive of garages, breezeways and porches, shall be two thousand two hundred fifty (2,250) square feet.
5. **Depth of Front Yard:** Twenty (20) foot minimum.
6. **Depth of Rear Yard:** Twenty-five (25) foot minimum.
7. **Width of Side Yard:** Five (5) foot minimum on the each side.
8. **Width of Side Yard Adjacent To Side Street:** Fifteen (15) foot minimum.
9. **Width of Lot:** Seventy-five (75) foot minimum.
10. **Depth of Lot:** One hundred and five (105) foot minimum.

F. GARAGES:

1. A detached garage, used to meet the minimum off street parking requirement, shall be permitted as an accessory use in a residential district. Said garage shall have a minimum interior dimension of twenty-one (21) feet side to side by twenty-two (22) feet front to back. Said garage shall also be constructed so as to accommodate the enclosed parking of at least two (2) automobiles.
2. A detached garage, which is provided in addition to the required two (2) car garage, shall be permitted as an accessory use in a residential district.
3. Any detached garage facing the street shall setback at least forty-five (45) feet from the front property line of a residential lot.

4. An attached garage structure, which is provided in addition to the required two (2) car garage may face any street only if the garage sits back at least forty-five (45) feet from the front property line of a residential lot.
5. Any garage structure, provided in addition to the required two (2) car garage, shall have a minimum interior dimension of 10 1/2' x 22' per vehicle space.

G. CONSTRUCTION REGULATIONS:

- (a) The exterior surface of all residential dwellings shall be constructed of glass, stucco (or similar applications approved by the Town of Trophy Club), stone, brick or other masonry materials. It is specifically required that the exterior wall area of each residence located within Fox Pointe will have not less than eighty (80) percent masonry coverage.

Three hundred (300) pound or thirty (30) year warranty, Timberline or equal composition roofing is the minimum standard of quality for roofing material to be used in the Subdivision.
- (b) Each residential structure shall have installed on the outside wall thereof a service riser conduit. No such conduit shall be visible from public streets, or Common Properties.
- (c) No above ground-level swimming pools shall be installed on any Lot.
- (d) **Time of Completion.** The following shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the building permit is issued by the Town of Trophy Club. All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot including landscaping and irrigation and all interior construction (including, but not limited to, all electrical outlets in place and operational, all plumbing fixtures installed and operational, all cabinet work, all interior walls, ceilings, and doors shall be covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering).
- (e) No projections of any type visible from the street shall be placed or permitted to remain above the roof of any residential building with the exception of chimneys and vent stacks.

H. DRIVEWAYS AND WALKWAYS: All driveways and walkways shall be constructed of exposed aggregate or stamped and colored concrete.

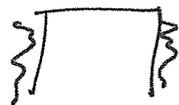
I. FENCES / WALLS / RETAINING WALLS: Retaining walls shall be restricted to structurally engineered and designed walls constructed or veneered with masonry to match the residence.

(a) **Front Yard Fencing.** Fencing will be allowed to extend from the front building line of a dwelling to the side property lines. All fencing shall be masonry, identical to the type of construction used on the residence located on such Lot or ornamental iron. All gates shall be ornamental iron.

(b) **Side Yard Fencing.** Fencing between Lots may be of masonry, ornamental iron, cedar or redwood. Providing that no wood fence is allowed from the rear of the residence toward the street.

applies to side yard adjacent to side street

(c) **Side or Rear Yard Fencing Visible from the Street.** Fencing shall be constructed as noted in Subparagraph (a).



(d) **Perimeter Fence.** Shall be installed by the Developer before Town acceptance. Construction shall be 2 x 2 brick columns 8' high spaced 40' on center with 8' high cedar panels between the columns. Support post for the cedar panels shall be 2" galvanized steel, 12' in length set in concrete.

*See deed
attached
for
2.19.04
pg 18*

J. LANDSCAPING:

Landscaping and Sprinkler System. Each Lot on which a residential dwelling is constructed shall have and contain an underground water sprinkler system for the purpose of providing sufficient water to all front yards, side and rear yards. Each Lot shall be planted with a least twelve (12) caliper inches of trees; provided, however, any tree used to satisfy this requirement shall contain at least three and one half (3 1/2) caliper inches. Preservations of existing trees is encouraged and credit may be given toward the planting requirements for trees preserved in a healthy condition.

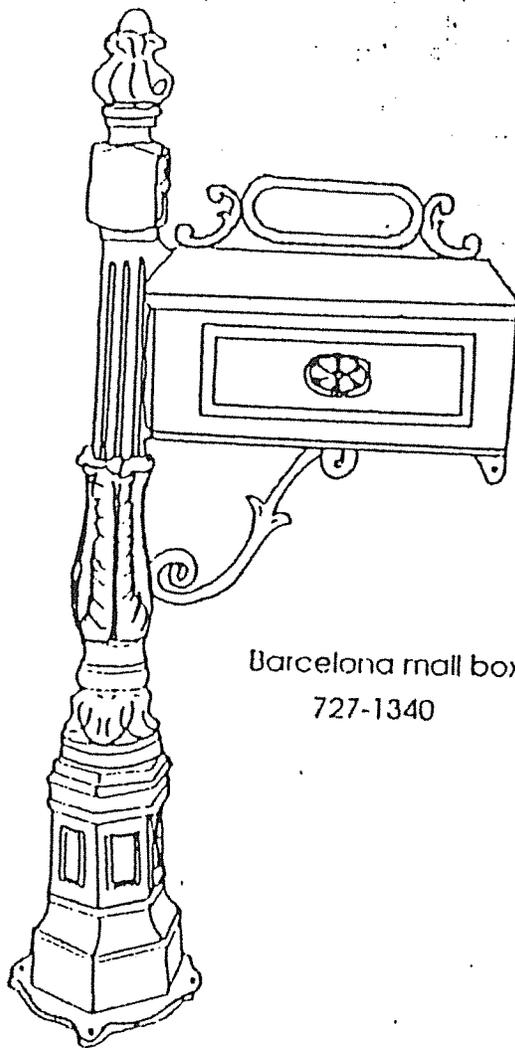
K. UTILITIES: All utilities shall be underground. Electric transformers shall be pad mounted and located at rear of Lots and permanently screened at time of installation. A living screen is not acceptable to satisfy this requirement.

L. TRASH RECEPTACLES AND COLLECTION: Each Lot Owner shall make or cause to be made appropriate arrangements with the Town of Trophy Club, Texas, for collection and removal of garbage and trash on a regular basis. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the Town of Trophy Club, Texas, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers approved by the Town of Trophy Club, Texas, and which shall be maintained in a clean and sanitary condition. An Owner may place trash on the street curb abutting his Lot only on those days designated by the Town of Trophy Club, Texas, as trash collection days. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

M. TEMPORARY STRUCTURES AND VEHICLES: No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence, house, garage or other structure appurtenant thereto shall be moved upon any Lot from another location, except for a sale, pre-sale or construction trailer; provided,

however, that Developer reserves the exclusive right to erect, place and maintain, such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements on the Properties in compliance with the regulations of the Town of Trophy Club. Such facilities may include, but not necessarily be limited to, a temporary office during the period of and in connection with the construction and sales operations on the Properties, but in no event shall the Developer have such right for a period in excess of that permitted by the Town of Trophy Club. Any truck, bus, boat, boat trailer, mobile home, campmobile, camper or any vehicle other than conventional automobile shall, if brought within the Properties, be stored, placed, or parked within the garage of the appropriate Owner.

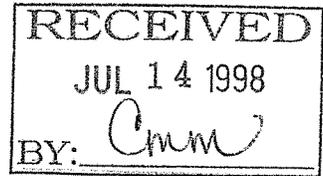
- N. **SIGNS**: Neighborhood identification signs are allowed in locations as shown on Exhibit B: PD Site Plan. Developer may erect and maintain a sign or signs for the construction, development, operation, promotion and sale of the Lots. Holiday or patriotic flags may be displayed by Developer and Owners. All signs shall be in accordance with the current ordinances and laws of the Town of Trophy Club.
- O. **EXTERIOR LIGHTING**: Pole Lamps shall be a maximum of fifteen (15) feet in height. Pole lighting shall be oriented down and away from all adjacent properties. Pole lamps should be of the quality of an American Style fixture as manufactured by Antique Street Lamps.
- P. **MAILBOX AND ADDRESS PLAQUE**: Each mailbox should be of quality of a Barcelona style mailbox as manufactured by Texas Metal Industries, Inc. Each residential structure shall have installed an address plaque as manufactured by P&L Cast Stone. (See attachment.)
- Q. **OPEN SPACE EASEMENT**: No fences nor structure of any kind shall be erected or placed within the open space easement.
- R. **SPEED LIMIT**: A design speed of 20mph may be used for the easterly most north/south street. A max speed of 20mph shall be posted for the entire development.
- S. **NON SPECIFIED REGULATIONS**: Any regulation not specifically addressed herein shall be governed by the regulations as contained in the R-10 Residential District of the Zoning Ordinance and other ordinances as may pertain to specific issues in the current zoning laws of the Town of Trophy Club.



Barcelona mail box
727-1340

MAIL BOX

EXHIBIT D



DECLARATION OF COVENANTS AND RESTRICTIONS

FOX POINTE (A Residential Subdivision)

(e) "Lot" and/or "Lots" shall mean and refer to each of the lots shown upon the Subdivision Plat or as may be shown on any replat thereof. References herein to the "the Lots (each Lot) in The Subdivision" shall mean and refer to Lots as defined respectively in this Declaration and all Supplemental Declarations.

(f) "Living Unit" shall mean and refer to any single-family residential unit located on property which as been brought within the plan of this Declaration. References to Living Units herein shall not be deemed to permit the use of any Lot in The Subdivision for any purpose other than single-family residential purposes. References herein to "The Living Units in the Subdivision" shall mean and refer to Living Units as defined respectively herein and in all Supplemental Declarations.

(g) "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plats, except the Lots and the streets as shown thereon, together with such other property as the Association may, at any time or from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plats, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to the "the Common Properties (any Common Property) in The Subdivision" shall mean and refer to Common Properties as defined respectively in this Declaration and all Supplemental Declarations.

(h) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of all Owners in The Subdivision constructed on portions of one or more Lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of this Declaration. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following; structures for recreation, storage or protection of equipment; sidewalks; common driveways; landscaping; swimming pool; tennis courts; and other similar and appurtenant improvements. References herein to "the Common Facilities (any Common Facility) in The Subdivision" shall mean and refer to Common Facilities as defined respectively in this Declaration and all Supplemental Declarations.

(i) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants and Restrictions bringing additional property within the scheme of this Declaration under the authority provided herein. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

(j) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract purchaser, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties, but, notwithstanding any applicable theory of mortgage, shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure. References herein to "the Owners" (any Owner) in The Subdivision" shall mean and refer to Owners as defined respectively in this Declaration and all Supplemental Declarations. In one or more Supplemental Declarations "Owner" may be defined by reference to ownership of a Living Unit, in addition to or instead of by reference to the ownership of a Lot.

(k) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV, Section 4 hereof, together with all the Owners in The Subdivision who are members of the Association as provided in all Supplemental Declarations. In one or more Supplemental Declarations, "Member" may be defined by reference to the Owner of a Living Unit, in addition to or instead of by reference to the Owners of a Lot.

ARTICLE II

Easements

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Subdivisions and restrictions applicable to the Properties. Further, Declarant in title has heretofore granted, created and dedicated by recorded instruments, certain other easements and related rights affecting the Properties. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant in title affecting the Properties 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 Declarant conveying any part of the Properties.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, constructed by or under Declarant or its agents through, along or upon any Lot or any part thereof to serve said Lot or any other portion of the Properties, and the right to maintain, repair, sell, or lease such appurtenances to any municipality to other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Properties for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewer, telephones, electricity, gas, and the Broadband Communication System and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Properties within the public utility easements from time to time existing and from service on or in any structure. Notwithstanding anything contained in this Section, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Properties until approved by Declarant.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles, postal service employees and vehicles, and other service vehicles to enter upon the Properties in the performance of their duties.

Section 6. Surface Area. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither the Declarant nor any supplier of any utility or service using 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. Further, neither the Declarant nor any supplier of any utility or service using 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 sidewalks, driveways, fences, walls or any other object occupying any such easement or any portion thereof, as a result of any activity relating to the construction, maintenance or repair of any facility in any such easement area.

ARTICLE III

Property Subject to this Declaration

Section 1. Description. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is all of Fox Pointe being 11.99 acres, approximately, out of the M. Medlin Survey, Abstract 832, according to the Subdivision Plat thereof recorded in Cabinet _____, Page _____ of the Plat Records of Denton County, Texas (or any subsequently recorded plat thereof).

Section 2. Mineral Exception. There is hereby excepted from the Properties, and Declarant will hereafter except from all sales and conveyances of the Properties, or any part thereof, including the Lots and Common Properties, all oil, gas, and other minerals in, on, and under the Properties, but Declarant hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas, and other minerals.

Section 3. Mergers. Upon a merger or consolidation of the Association with another association, the Association's properties, rights, and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions applicable to the properties of the merging or consolidating associations as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration or any Supplemental Declaration.

ARTICLE IV

The Association

Section 1. Organization. The Association shall be Fox Pointe Homeowners Association.

Section 2. Purpose. The purpose of the Association in general is to provide for and promote the health, safety, and welfare of the Members, to collect the annual maintenance charges and to administer the Maintenance Fund, to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Properties and Common Facilities in The Subdivision and such other purposes as are stated in the Articles of Incorporation consistent with the provisions of this Declaration and all Supplemental Declarations.

Section 3. Trustees. The Association shall act through a three (3) member Board of Trustees, which shall manage the affairs of the Association.

Section 4. Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors, each of whom shall be a Class A or Class B Member, or an officer, employee, representative or agent of a Class A or Class B Member. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the behalf of the Properties, the Common Properties and the Owners, shall provide and pay for, out of the fund(s) collected by the Association pursuant to Article VI below, the following:

- (a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 8 herein.
- (b) Care and maintenance of the landscaping, water features, screening walls and entry features which may be constructed by Declarant on the Common Properties or on private property. Maintenance includes all repair, rebuilding or cleaning deemed necessary by the Board of Directors.
- (c) Should the Board so elect, maintenance of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties and/or the Lots, except for landscaping and other like improvements which are located with rear yards or side yards enclosed by solid fence, which shall be maintained by the individual Lot Owner. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.
- (d) The services of a person or firm to manage and/or provide consultation to the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.
- (e) Legal and accounting services.
- (f) A policy or policies of insurance insuring the Association, its officers and directors against any liability to the public or to the Owners (and/or their invitees or tenant) incident to the operation of the Association, including, without limitation, officers' and directors' liability insurance.
- (g) Workers' compensation insurance to the extent necessary to comply with any applicable laws.
- (h) Such fidelity bonds as may be required by the Bylaws or as the Board may determine to be advisable.
- (i) Any other materials, supplies, insurance or property owned by the Association, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.
- (j) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties.
- (k) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on one or more Lots with respect to: (i) taxes on the Common Properties and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned in this Declaration.

(l) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(m) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Properties, expressly including the power to enter into management and maintenance contracts.

(n) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(o) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Properties, by a majority of the Members in the portions affected.

(p) Subsequent to incorporation, to make available to each Owner, within one hundred twenty (120) days after the end of the each year, an unaudited annual report.

(q) Pursuant to Article XI herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(r) If, as and when the Board, in its sole discretion, deems necessary, it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

Section 5. Board Powers. From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 6. Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

Section 7. Liability Limitations. No Member, officer of the Association or member of the Board of Directors shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises; improvements or portion thereof or failure to repair or maintain the same.

The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or controlled. Under no circumstances shall Declarant ever be held liable for any damages or injuries of any kind of character or nature whatsoever resulting from: (i) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Properties; and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties.

Section 8. Reserve Funds. The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, street, street light and screening wall repair, water features and drainage channel improvements or repair of major damage to the Common Properties not covered by insurance.

Section 9. Members. Each Owner, whether one or more persons or entities, of a Lot or a Living Unit in The Subdivision shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot or Living Unit and may not be separated from such ownership. Whenever the legal ownership of any Lot or Living Unit passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 10. Voting Rights. The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Class B Members. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot; all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

CLASS B. Class B Members shall be Declarant and any bona fide Owner who is engaged in the process of constructing a residential dwelling on any Lot for sale to consumers. Declarant shall be entitled to six (6) votes for each Lot owned by all Class B Members. Class B Members other than Declarant shall be non-voting Members of the Association. The Class B membership shall cease, and each Class B Member shall become a Class A Member, upon the earlier to occur of the following:

(i) when the total number of votes outstanding in the Class A membership is eight (8) times greater than the total number of votes outstanding in the Class B membership; or

(ii) when Declarant no longer owns record title to any of the Lots.

Notwithstanding the voting rights within the Association, until the Declarant no longer owns record title to any lot, the Association shall take no action with respect to any matter whatsoever without prior written consent of the Declarant.

ARTICLE V

Property Rights in the Common Properties and Common Facilities

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 2. of this Article V, every Member shall have a common right and easement of enjoyment in and to the Common

Properties and Common Facilities in The Subdivision, and such right and easement shall be appurtenant to and shall pass with the title to each Lot or Living Unit in The Subdivisions.

Section 2. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of the recreational Common Facilities, and to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Properties and Common Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each Member. These rules and regulations may include provisions to govern and control the use of such Common Properties and Common Facilities by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Properties and Common Facilities or any part thereof at the same time; and
- (b) The right of the Association to grant or dedicate easements in, on, under or above such Common Properties or any part thereof to any public or governmental agency or authority or to any utility company for any service to The Subdivision or any part thereof; and
- (c) The right of the Association to enter management and/or operating contracts or agreements relative to the maintenance and operation of such Common Properties and Common Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; the right of the Association to operate recreational facilities and related concessions located on such Common Properties; the right on the Association to enter lease agreements or concession agreements granting leasehold, concession, or other operating rights relative to Common Facilities in such instances and on such terms as its Board of Trustees may deem appropriate; and
- (d) The right of the Association to suspend the voting rights of a Member of his right to use any recreational Common Facility during the period he is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against his Lot or Living Unit; and to suspend such rights for a period not to exceed sixty (60) days for an infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration and all Supplemental Declarations or in its Bylaws or at law or in equity on account of any such default or infraction; and
- (e) The rights and easements existing, herein created or hereafter created in favor of others, as provided for in Article II hereof, and in this Declaration and all Supplemental Declarations; and
- (f) The restrictions as to use of the Common Properties provided for in Article IX hereof.

Section 3. Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Properties and Common Facilities in The Subdivision, together with all easement rights granted to Members in this Declaration and all Supplemental Declarations, to the members of his family, his tenants, or contract purchasers who reside on his Lot or in his Living Unit. The terms "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by and legal process, or by operation of law, or in any other legal manner.

ARTICLE VI

Assessments and Charges

A. Annual Assessments

Section 1. The Maintenance Fund. All funds collected by the Association from the regular maintenance charges provided for in this Article, together with all funds collected by the Association from the regular annual maintenance charges imposed on the Lots and Living Units in The Subdivision by this Declaration and all Supplemental Declarations, shall constitute and be known as the "Maintenance Fund." The Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members for, among others, the following purposes, to-wit: to promote the health, safety, recreation, and welfare of the Members, including, without limitation, the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Properties and Common Facilities in the Subdivision, and any other areas provided by this Declaration or any Supplemental Declaration to be developed or maintained by the Association, such as shrubbery, trees, walkways, and the mowing and general maintenance of vacant Lots in the Subdivision, and the construction, repair, maintenance and replacement of properties, services, improvements and facilities devoted to such purposes and related to the use and enjoyment of The Subdivision by the Members.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Owners in The Subdivision which are situated on property owned by Declarant (or affiliated or subsidiary entities) but which then has not been brought within the scheme of this Declaration, the Association shall have the right and authority to allocate and expend such amounts from the Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board of Trustees shall determine, in its sole discretion. Further, if all or any such Common Facilities situated on property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Owners in The Subdivision, the Association shall have the right and authority to enter agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee), in such instances and on such terms as its Board of Trustees may deem appropriate and acceptable, obligating the Association to contribute, from the Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

The Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1 preference over other purposes, and it is agreed that all expenses incurred and expenditures and decisions made by the Board of Trustees of the Association in good faith shall be binding and conclusive on all Members.

In the event Declarant shall operate any Common Facility in The Subdivision, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all costs actually incurred by Declarant in maintaining and operating such Common Facility in excess of the actual proceeds realized by Declarant from such operation, as such costs are incurred, to the extent that the balance of the Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Trustees of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association. Further, Declarant shall be entitled to be reimbursed from the Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Properties and Common Facilities and accrued subsequent to the recordation of The Declaration, and prior to the date on which title to such Common Properties and prior to the date on which title to such

Common Properties and Common Facilities is conveyed to the Association by Declarant, which have been actually paid by Declarant.

Section 2. Covenant for Assessments and Creation of Lien. Subject to the provisions set forth in Sections 3. and 4. relating to the rate at which the maintenance charge and assessment imposed herein shall be paid on unimproved Lots, each and every Lot in the Properties is hereby severally subjected to and impressed with a regular annual maintenance charge or assessment in the amount of SIXTY AND NO/100 DOLLARS (\$60.00) per annum per Lot (herein sometimes referred to as the "full maintenance charge") which assessment shall affect and run with the land, subject to increase and decrease and payable as provided in Section 5. below.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership thereof, as the same shall become due and payable, without demand. The charges and assessments herein provided for and assessed, together with those hereafter assessed, shall be a charge and a continuing lien, which such lien is hereby created and imposed, upon each Lot, together with all improvements thereon, as hereinafter more particularly stated. Each assessment, together with the interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay such assessment accrued, but no Member shall be personally liable for the payment of any assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Properties and Common Facilities, or any part thereof, or by abandonment of his Lot or his interest therein. The liens hereby created and imposed shall be valid, subsisting and continuing, and shall maintain for so long as this Declaration and all Supplemental Declarations continue in effect, unless modified or amended in accordance herewith, notwithstanding the fact that at one or more times during the existence of this Declaration there may be no amount(s) due the Association, as it is the intention hereof that assessments shall arise annually and that same shall constitute present or future indebtedness, all of which shall be secured by the lien created hereby.

Section 3. Unimproved Lots Owned by Declarant or Builders. Declarant and builders shall pay ten percent (10%) of the then existing full maintenance charge assessment for each Lot owned by them, unless and until a residential structure has been built thereon and six (6) months have elapsed since the substantial completion of such residence, or the residence has been permitted to be occupied, whichever occurs first. Thereafter, commencing on the first day of the next succeeding calendar month, the full maintenance charge then assessed shall become applicable. If the annual maintenance charge on such Lot has been prepaid at ten percent (10%) of the full maintenance charge then assessed for the portion of the calendar year remaining after the full maintenance charge becomes applicable to such Lot, as herein provided, the then Owner of such Lot shall be obligated to pay to the Association, on the date the full maintenance charge becomes applicable, as herein provided, that prorata portion of ninety percent (90%) of such full maintenance charge as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each builder to notify the Association at the time a residence has been substantially completed or permitted to be occupied. The term "substantial completion" as used herein shall mean that the residence is ready for occupancy, except for minor items which must be furnished, completed, corrected or adjusted. The term "builder" for the purpose of this Declaration is defined as any person, firm, corporation, or other entity who is engaged in the business of building residential structures for sale or rental purposes, and not for his or its personal use or occupancy.

Section 4. Unimproved Lots Owned by Owners Other Than Declarant and Builders. Owners of unimproved Lots other than Declarant and builder shall pay fifty percent (50%) of the then existing full maintenance charge assessment for each Lot owned by them until a residential structure has been completed thereon and has been occupied. Thereafter, commencing on the first day of the next succeeding calendar month, the full maintenance charge then assessed shall become applicable. If the annual maintenance charge on such Lot has been prepaid at fifty percent (50%) of the full maintenance charge then assessed for the portion of the calendar year remaining after the full maintenance charge

becomes applicable, as herein provided, that prorata portion of fifty percent (50%) of the full maintenance charge then assessed, which shall bear the same ratio to fifty percent (50%) of such full maintenance charge as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each such Owner to notify the Association at the time such residential structure has been completed and occupied.

Section 5. The Annual Maintenance Charge. The annual maintenance charge assessments provided for herein shall be payable on the date (which shall be the first day of a month) fixed by the Board of Trustees and shall be for the balance of the calendar year in which it is due, or shall be payable in equal monthly installments over the balance of the year, at the election of the Board of Trustees of the Association. The assessments for each calendar year after the first assessment year shall be due and payable to the Association in advance on January 1st each year, or in twelve (12) equal monthly installments over such year, at the election of the Board of Trustees of the Association. Provided, however, that, upon the purchase of his Lot (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a prorata part of the applicable percentage (as determined pursuant to the terms hereof) of the regular annual maintenance charge assessed on such Lot, which shall bear the same ratio to the applicable percentage of the full remaining in the year of purchase bears twelve (12), and which shall be payable in full upon such purchase or in equal monthly installments over the balance of the year of purchase, as the Board of Trustees of the Association may elect.

The Board of Trustees of the Association may decrease or increase the amount of the annual maintenance charge of assessment provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the annual maintenance charge assessment shall become effective prior to the expiration of ninety (90) days from date of its adoption. The Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Trustees which fixes the amount of the annual maintenance charge or assessment in excess of SIX HUNDRED AND NO/100 DOLLARS (\$600.00) per year, shall become effective unless and until such resolution is ratified either (i) by the written assent of the Members of the Association who in the aggregate then own at least fifty-one percent (51%) of the Lots and Living Units in The Subdivision if no meeting of the membership is held for ratification, or (ii) by the assent of fifty-one (51%) of the votes of the Members of the Association who are present and voting in person or by proxy at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the Members must be given prior to the effective date of such resolution of the Board of Trustees. No increase in the annual maintenance charge of assessment shall take effect retroactively.

If any resolution of the Board of Trustees which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount of the regular annual maintenance charge or assessment last in effect shall continue in effect until duly changed in accordance with the above provisions. The Board of Trustees may decrease the amount of the annual maintenance charge of assessment without ratification by or assent of the Members of the Association.

Section 6. Quorum for any Action Authorized Under Section 5. The quorum required for any action authorized by Section 5. hereof shall be as follows:

At the first meeting called, as provided in Section 5. hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (½) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 7. Setting, Commencement and Notice of Assessments. The Board of Trustees of the Association shall fix the date of commencement and the amount of the assessment against each Lot or Owner for each assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association, shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer 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.

Section 8. Liens to Secure Assessments. The annual maintenance charges or assessments, as hereinabove provided for, shall constitute and be secured by the separate, valid and subsisting lien, hereinabove created and fixed, and which shall exist upon and against each Lot and Living Unit and all improvements thereon, for the benefit of the Association and all Members. Subject to the condition that the Association be made a party to any Court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

(a) all liens for taxes or special assessments levied by the City, County, and State governments, or any political subdivision or special district thereof, and

(b) all liens securing amounts due or to become due under any term Contract of Sale dated, or any mortgage, vendor's lien, or deed of trust filed for record, prior to the date payment of any such charges or assessments become due and payable, and

(c) all liens, including, but not limited to, vendor's liens, deeds of trust, and other security instruments which secure any loan made by a lender to an Owner for any part of the purchase price of any Lot when the same is purchased from a builder or for any part of the cost of constructing, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

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 cut off and extinguish the liens securing maintenance charges or assessments which became due and payable prior to such foreclosure date, but no such foreclosures shall free any Lot from the liens securing assessments thereafter become 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 a foreclosure.

Section 9. Effect of Non-Payment of Assessment. If any annual maintenance charge of 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 interest rate allowed under the laws of the State of Texas, and, if placed in the hands of an attorney for collection or if suit is brought thereon or if collected through probate or other judicial proceedings, there shall be paid to the Association an additional reasonable amount, but not less than ten percent (10%) of the amount owing, as attorneys fees. The Association, as a common expense of all Members, may institute and maintain an action at law or in equity against any defaulting Member to enforce collection and/or for foreclosure of the liens against his Lot. All such actions may be instituted and brought in the name of the Association and may be maintained and prosecuted by the Association in a like manner as an action to foreclose the lien of a mortgage or deed of trust on real property.

Section 10. Collection and Enforcement. Each Member, by his assertion of title or claim of ownership or by his acceptance of a deed to a Lot or Living Unit, whether or not it shall be so recited in such deed, shall be conclusively deemed to have expressly vested in the Association, and in its officers and agents, the right, power and authority to take all action which the Association shall deem proper for the collection of assessments and/or for the enforcement and foreclosure of the liens securing the same.

B. Utility Standby Charge

No utility standby charge shall be due on Lots owned by the Declarant.

ARTICLE VII

Architectural Control Committee;
Architectural and Construction Control

Section 1. Architectural Control Committee. The Architectural Control Committee, hereinafter called "the Architectural Control Committee" shall be composed of three (3) or more individuals selected and appointed by Declarant. The Committee shall function as a representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class residential development. The Committee shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the properties.

A majority of the Committee Members may act on behalf of entire Committee. In the event of the death or resignation of any Committee Member, the remaining Committee Members shall have full authority to designate and appoint a successor. Each Committee Members shall neither be entitled to any compensation for service performed hereunder nor be liable for claims, causes of action or damages (except where occasion by gross negligence or arbitrary and capricious conduct) arising out of service performed pursuant to this Declaration.

Section 2. Transfer of Authority to the Association. The duties, rights, powers and authority of the Architectural Control Committee constituted hereby may be assigned at any time, at the sole election of a majority of the Committee Members, to the Board of Trustees of the Association, and from and after the date of such assignment, and the acceptance thereof by such Trustees, the Board of Trustees of the Association shall have full right, authority and power, and shall be obligated, to perform the functions of the Architectural Control Committee as provided herein, including the right to designate a representative or representatives to act for it.

Section 3. Minimum Construction Standards. The Architectural Control Committee may from time to time promulgate architectural standard bulletins ("Standard Bulletins") which shall be fair, reasonable and uniformly if applied thereafter, and shall carry forward the intention of this Declaration. Standard Bulletins shall cover minimum acceptable construction standard and specifications (including, without limitation, a limited number of acceptable exterior materials and/or finishes), which shall constitute guidelines only and shall not be binding upon the Architectural Control Committee or in any manner determinative of the approval or disapproval by such Committee of submitted plans and specifications. The Standard Bulletins shall supplement the Declaration and are incorporated herein by reference. All architectural restrictions shall be in compliance wit the Town of Trophy Club regulations. Some restrictions may exceed the Town of Trophy Club regulations, but in no case shall this document be interpreted to give authority to the Architectural Control Committee to approve any standards less than the then current Town of Trophy Club regulations.

Section 4. Approval of Plans

(a) No building, structure, fence, wall, or other improvements shall be commenced, erected, constructed, placed or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications therefore shall have been submitted to and approved in writing as to compliance with minimum structural and mechanical standards, slab evaluation, location and situation on the Lot, and as to harmony of external design or location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the Lot lines), by the Architectural Control Committee constituted as provided herein. Each application made to the Architectural Control Committee for the approval required hereby shall be accompanied by two (2) sets of plans and specifications which shall specify, in such form as the Architectural Control Committee may

reasonably require, structural, mechanical, electrical, and plumbing detail and the nature, kind, shape, height, exterior color scheme, materials to be incorporated into, and location of the proposed improvements or alterations thereto, the location of all driveways and curb cuts, and the compliance of the drainage of said Lot with the overall planned drainage of the Properties as developed and pronounced by Declarant. In the event said Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of the Section will be deemed to have been fully complied with; provided, however, that the failure of the Architectural Control Committee to approve or disapprove such plans and specifications within such thirty (30) day period shall not operate to permit any structure to be commenced, erected, placed, constructed or maintained on any Lot in the Properties in a manner inconsistent with any provision of this Declaration. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration and repair of any improvement on any Lot.

The Architectural Control Committee also shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed to meet its minimum construction requirements or architectural design requirements that might not be compatible, in the sole discretion of the Architectural Control Committee, with the design or overall character and aesthetics of the Properties.

(b) The Architectural Control Committee shall have the power and authority to alter and amend requirements as to design of buildings and materials to be used in the construction thereof for any Lot or Lots, provided that such authority shall be exercised for the purpose of harmonizing and making aesthetically attractive The Properties or the portion of The Properties in which the Lots so affected are located, as such matters may be determined in the good faith judgment of the Architectural Control Committee.

(c) The Architectural Control Committee or its duly appointed agent or designee may enter upon and inspect any Lot and any Improvements or structures being constructed thereon, and the drainage of the Lot in relation to the remainder of the Properties at any time during the construction thereof to ascertain whether any such improvements or structures are being constructed in such a manner so as to (i) fully comply with the provisions of the Declaration and any minimum construction or design requirements imposed by the Architectural Control Committee, and (ii) comply in all material respects to the plans and specifications previously approved by the Architectural Control Committee. Each and every Owner by acceptance of conveyance of the applicable Lot shall be deemed to have granted to the Architectural Control Committee and its appointed agent or designee an easement across said Lot to enable the inspection authorized hereby.

(d) If any structure shall be erected, placed or maintained or if any improvement shall be made on any Lot other than in accordance with plans and specifications approved by the Architectural Control Committee, such structure or improvement shall constitute a violation. In the event such violation is not cured within a reasonable period of time, the Architectural Control Committee shall have the right to take necessary action provided by law to cause same to be cured. The costs of any such successful action shall be borne by the Owner.

Section 5. Slab Elevation Certification. The Architectural Control Committee shall additionally have the power to set minimum slab elevations for any Lot within the Properties. In connection therewith, each affected Owner shall submit to the Architectural Control Committee, prior to commencement of the construction or erection of any residential structure, attached garage or other attached appurtenance thereto on any Lot, together with the plans and specifications and other data herein required, a certificate from a registered professional engineer (or such other authority as shall be acceptable to the Architectural Control Committee) certifying, in such form as may be required by the Architectural Control Committee, the elevation above mean sea level of the top of the finished slab (or finished beam, if a pier and beam foundation is utilized) for all portions of such residential structure, attached garage or other attached

appurtenance relative to and based on such submitted plans and specifications and the proposed location of such structure on the Lot.

Section 6. Construction Requirements.

(a) Only new construction materials (except for used brick) shall be used and utilized in constructing any structure situated on a Lot. Eighty percent (80%) of the exterior materials of all residential structures on all Lots shall be of brick, stone or stucco, of the remaining twenty percent (20%) no exterior construction shall be of less than 3/4 inch thick materials, and the use of plywood, aluminum or metal siding is prohibited.

(b) All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior walls, ceilings, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the building permit is issued.

(c) A concrete sidewalk four (4) feet wide shall be constructed from the street adjacent to the front of each Lot to the front of the residential structure to be situated thereon. The plans for each residential building on each Lot shall include plans and specifications for such required sidewalk and any other proposed sidewalk. Such required sidewalk and other approved sidewalks, if any, shall be constructed and completed before the main residence is occupied. A sidewalk may connect to a driveway in lieu of the adjacent street.

ARTICLE VIII

Building and Use Restrictions

Section 1. Residence Building and Garages. No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than a single family residence, with appurtenances incident to single family use, including, without limitation, bona fide servants' quarters, and no structure shall be occupied or used until the exterior construction therefore is completed. Each single family residence situated on a Lot shall have an enclosed, attached or detached garage for not less than two (2) nor more than four (4) automobiles. No detached garage shall have more than two (2) stories. No carport shall be built, placed, constructed or reconstructed on any Lot. The ground floor of any garage shall never be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Garage doors shall be kept closed at all times except during periods of use. After nightfall, garage doors shall be kept closed except during periods of ingress and egress.

Section 2. Single Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family residence for the Owner or his tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments or other apartment use. No Lot shall be used or occupied for any business, commercial, trade, or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not.

Section 3. Minimum Lot Area. Lots may be resubdivided if (any only if) such subdivision results in each resubdivided Lot containing not less than 10,000 square feet of land. Provided, however, Declarant shall have and reserves the right, at any time to file a replat of the Subdivision Plat or Plats to effect a resubdivision or configuration of any Lots in the Properties then owned by Declarant, so long as such results in each resubdivided Lot containing not less than 10,000 square feet of land. The privilege to replat Lots in The Properties owned by Declarant reserved in this Section 3. shall be exercisable only by Declarant or any successor or Declarant's ownership of such Lots who acquires such ownership other than by purchase, and such privilege shall not be exercisable by, inure to the benefit of, or be assignable to any purchaser from Declarant or from any successor or assign of Declarant, of any Lot in The Properties.

Section 4. Combining Lots. Any such consolidation shall be permitted with the Town's rules and regulations.

Section 5. Size of Residences. No residential structure erected on any Lot shall have more than two and half (2 1/2) stories. No residential structure with a net living area of less than 2,250 square feet exclusive of the area of attached garages, porches, servant's quarters, or other appurtenances or appendages, shall be erected on any Lot.

Section 6. Building Location. No structure shall be located on any Lot between any building setback line shown on or provided for in the Subdivision Plats and the street or Lot line to which such building setback line is applicable. No building shall be located nearer than five (5) feet to any interior Lot line. No main residential structure shall be located on any Lot nearer than twenty-five (25) feet to any rear Lot line. Unless otherwise approved in writing by the Architectural Control Committee, each main residence shall face the front Lot line of the Lot upon which it is situated. Each garage shall be provided with a driveway access from the front of the Lot upon which it is situated; provided that, in the sole discretion of the Architectural Control Committee, such access may be from the front or side of corner Lots. All garage doors shall be equipped with an automatic garage door closer (which the owner shall maintain in a functional condition), and each Owner shall be obligated to keep his garage door and/or doors closed at all times, except at time of entry or exit from the garage facility. For the purpose of this subsection, eaves, steps, fireplace chimneys and open porches shall not be considered as a part of the building; provided, however, that the foregoing shall not be construed to permit any position of a building on any Lot to encroach upon another Lot or any drainage or utility easement.

Unless otherwise approved in writing by the Architectural Control Committee, each main residence building will face the front of the Lot, and each detached garage facing the street will be located at least forty-five (45) feet from the front of the Lot on which it is situated, and each garage (whether attached or detached) will be provided with a driveway access from the front of the Lot; provided that such access may be from the front or side of corner Lots.

Section 7. Air Conditioners. No window or wall type air conditioners shall be permitted to be used, placed or maintained on or in any building in any part of The Properties.

Section 8. Garbage Disposal. Each kitchen in each residential structure on any Lot shall be equipped with a garbage disposal unit, which garbage disposal shall at all times be kept in an operational condition.

Section 9. Roofing. The approved roofing material shall be clay tile, slate, or fiberglass shingles with a minimum weight of 300 pounds per square. Use of any other roofing material requires written approval from the Architectural Control Committee and the Town of Trophy Club. The use of any roofing materials in the predominant color of white is expressly prohibited.

Section 10. Prohibition Against Aluminum Windows. No gray aluminum (mill finish) windows shall be used in the construction of any dwelling or other building on any portion of The Properties unless specifically authorized in writing by the Architectural Control Committee.

Section 11. Antennas, etc. No electronic antenna or device of any type, including any type or form of satellite dish, other than one antenna for receiving television signals, FM signals and/or citizen's band signals larger than 18" high or 18" diameter shall be erected, constructed, placed or permitted to remain on any other Lots, residences thereon or other permitted buildings constructed in The Properties. The permitted antenna may be attached to the residential structure; however, the antenna's location shall be restricted so as to be hidden from sight, when viewed from any street.

Section 12. Walls, Fences and Hedges. No walls, fences or hedges shall be erected or maintained nearer to the front Lot line than the front wall of the structure situated on such Lot. All side or rear fences must be at least six (6) feet in height, unless otherwise approved in writing by the Architectural Control Committee. No wood fence shall face any street.

No chain link fences shall be permitted.

Ownership of any wall, fence or hedge erected on a Lot by Declarant (and the right to erect any such wall, fence or hedge for such purpose is hereby reserved in favor of Declarant, its successors and assigns) shall pass with title to such Lot and it shall be the Owner's responsibility to maintain said wall thereafter. In the event of default on the part of the Owner of any Lot in maintaining said wall, and such default continuing after ten (10) days written notice thereof, Declarant, its successors or assigns may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause said protective screening to be repaired or maintained or to take any other action necessary to secure compliance with this Declaration, and place said wall in a satisfactory condition, and may charge the Owner or occupant of such Lot for the cost of such work by submitting a statement to such Owner setting forth the cost of such work to the Owner or occupant of such Lot. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot, to pay such statement immediately upon receipt thereof. The amount of such charge, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs of collection, shall be a charge and continuing lien upon such Lot, as well as the continuing personal obligation of the Owner of such Lot at the time such charge is incurred. The lien securing such charge shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance or request of the Owner of any such Lot to secure the payment of monies advanced on account of the purchase price and/or improvement of any such Lot.

Section 13. Temporary and Other Structures. No structure of a temporary character, no trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other than structure or building other than the residence to be built thereon in accordance herewith, shall be placed on any Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain, such facilities in and upon the The Properties as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling or residences and constructing other improvements in the Properties. Such facilities may include, but not necessarily be limited to, a temporary and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations in the Properties, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence in the Properties.

Section 14. Driveways and Culverts. Each Lot must be accessible to an adjoining street by a driveway suitable for such purposes before the residential structure located on any such Lot may be occupied or used. No Owner may block any drainage channel (including road ditches). The specifications for and construction of all drain tiles or culverts, whether to be installed in connection with a driveway or otherwise, must be approved by the Architectural Control Committee. Driveways shall be entirely of concrete and shall be constructed with expansion joints not more than twenty feet apart, with one joint at the back of the street curb. The width of each driveway shall flair and the curb shall be cut in such a manner that the driveway shall be a least six (6) inches thick at its end toward the street paving,

and this extreme shall be poured against a horizontal form board to reduce the unsightly appearance of a raveling driveway.

Section 15. Landscaping. A landscape plan shall be submitted with the construction plans and must be approved by the Architectural Control Committee prior to issuance of a building permit. Such landscaping is to be done in the parkway area and on the front of the Lot at the time the residential structure is being completed and before occupancy. All to include sprinkler system and fully sodded yard. Each front yard shall be planted with at least twelve (12) caliper inches of oak trees; provided, however, any oak tree used to satisfy this requirement shall contain at least three (3½) caliper inches.

Section 16. Exterior Chimneys. All exterior exposed fireplace structures shall be masonry clad with the same material as the residence. No metal chimney cap shall be allowed without written authorization from the Architectural Control Committee.

Section 17. Removal of Dirt. The digging of dirt or the removal of any dirt from any Lot or from any portion of the Common Properties is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 18. Septic Tanks. No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot, or any other portion of the Properties.

Section 19. Mail Deposit Receptacles. The Architectural Control Committee reserves the right to approve the type, design and installation of any mail delivery boxes or mail deposit receptacles.

Section 20. Signs. Except for signs, billboards or other advertising devices displayed by Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section 5. are expressly transferred, shall own any portion of the Properties, no sign of any kind shall be displayed to the public view on any Lot or the Common Properties except:

- (a) Builders may display one (1) sign of not more than five (5) square feet on a Lot to advertise the Lot and residential structure situated thereon for sale during the sales and/or construction period; and
- (b) Any Owner may display one (1) sign of not more than five (5) square feet on a Lot improved with a residential structure to advertise the Lot and residence for sale or rent.

Section 21. Nuisance. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Trustees of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than three-quarters of a ton, motor vehicle not currently licensed, boats, trailers, campers, motor or mobile homes or other vehicles shall be permitted to be parked on any Lot, except in a closed garage, or on any street, except passenger cars and trucks smaller than three-quarters of a ton may be parked on the street in front of the Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any Lot (except inside a closed garage), street, or any portion of the Common Properties. Discharging of firearms, airguns, bows and arrows, or any other device or instrument capable of injuring or killing, firecrackers, or other fireworks in the Properties is prohibited. No motor bikes, motorcycles, motor scooters, "go-carts", or other similar vehicles shall be permitted to be operated in the Properties, if, in the sole judgement of the Board of Trustees of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance.

Section 22. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the Common Properties, except that dogs, cats, or other common household pets (not to exceed three (3) adult animals) may be kept, but they shall not be kept for commercial purposes. Any dogs, cats or other common household pets that may be kept on the premises

of any Lot, shall, upon leaving or being taken from said Lot, be restrained in the care, custody and control of the pet's owner by a leash, rope, chain or other device, and shall not be allowed to run loose in the Common Properties, streets, the Lots, or any other areas.

Section 23. Garbage and Refuse Storage and Disposal. All Lots and the Common Properties shall at all time be kept in a healthful, sanitary and attractive condition. No Lot, street or any part of the Common Properties shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

In the event of default on the part of the Owner of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant, or its successors and assigns may, at its option, without liability to the Owner in trespass or otherwise, enter upon said Lot and cause to be removed such building materials, garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration in order to place said Lot neat, attractive, healthful and sanitary condition, and may assess the Owner of such Lot for the cost of such work, by submitting a statement setting forth the cost of such work to the Owner of such Lot. The Owner agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof. Each such assessment, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs of collection, shall be a charge and continuing lien upon such Lot, as well as the continuing personal obligation of the Owner of such Lot at the time of such assessment. The lien securing such assessment shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance or request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or improvement of any such Lot.

Section 24. Lot Maintenance. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted or permit the accumulation of garbage, trash or rubbish of any kind thereon. The drying of clothes in full public view is prohibited.

In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements, or any of them, such default continuing after ten (10) days written notice thereof, Declarant or its successors and assigns may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause to be cut such weeds and grass or do any other thing necessary to secure compliance with this Declaration in order to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work, by submitting a statement setting forth the cost of such work to the Owner or occupant of such Lot. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof. Each such assessment, together with interest thereon at the rate of ten percent (10%) per annum and reasonable cost of collection, shall be a charge and continuing lien upon such Lot, as well as the continuing personal obligation of the Owner of such Lot at the time of such assessment. The lien securing such assessment shall be second, subordinate and inferior to all liens, present and future, give, granted and created by or at the instance or request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or improvements of any such lot.

Section 25. Utilities. Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line.

Section 26. Drainage. Neither the Declarant or the Association, or any of their successors or assigns, shall be liable for any loss of use of, or damage done to any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot whatsoever in the Subdivision caused by any water levels, rising waters, or drainage waters. No Owner shall do anything to cause or which causes the interruption or alteration of the planned drainage of the Properties as prescribed by Declarant or by anyone acting for Declarant in this particular matter.

Section 27. Access. No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Properties unless the express written consent of the Architectural Control Committee first shall have been obtained.

Section 28. Oil, Water and Mining Operations. No water well drilling, no oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil and natural gas shall be erected, maintained or permitted upon any Lot.

Section 29. Use of Common Properties. There shall be no obstruction of any part of the Common Properties, which are intended to remain unobstructed for the reasonable use and enjoyment thereof. No Owner shall appropriate any part of the Common Properties to his exclusive use, nor shall any Owner do anything which would violate the easements, rights, and privileges of any Owner in regard to any portion of the Common Properties which is intended for the common use and benefit of all Owners. Except as may be herein permitted, no Member shall plant, place, fix, install or construct any vegetation, hedge, tree, shrub, fence, wall, structure, or improvements or store any of his personal property on the Common Properties or any part thereof without the written consent of the Association first being obtained. The Association shall have the right to remove anything placed on the Common Properties in violation of the provisions of this Section and to recover the cost of such removal from the Owner responsible, and to have a lien on such Owner's Lot to secure the payment of such cost, all on the same terms and provisions as are set forth in Section 16. next above.

Section 30. Exempt Property. Notwithstanding any provisions herein to the contrary, the Common Properties shall not be subject to or burdened by the building and use restrictions set forth in this Article IX, except to the extent same are made specifically applicable to the Common Properties.

Section 31. Retaining Walls. Retaining walls may be constructed to achieve even grades for landscaping, pools, driveways or house foundations, any such retaining wall must be uniform in height with a flat top and must be constructed of compatible masonry materials approved by the Architectural Control Committee, which shall be consistent with the overall appearance of the residential dwelling. No railroad ties or landscape timber retaining walls shall be permitted.

Section 32. Wall Surface Above Garage Doors. All wall surface above the garage doors shall be masonry to match the residence.

Section 33. Open Space Easement. No fences nor structure of any kind shall be erected or placed within the open space easement.

ARTICLE IX

General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration or any Supplemental Declaration, their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2020. During such initial term (a) the covenants and restrictions contained in all Articles hereof other than Articles VIII and IX may be changed or terminated only by an instrument signed by the then Owners

of not less than ninety percent (90%) of the Lots in the Properties and properly recorded into the appropriate records of Denton County, Texas. Upon the expiration of such initial term, all of the covenants and restrictions of this Declaration (as changed, if changed), and the enforcement rights relative thereto, shall be automatically extended for successive periods of ten (10) years. During such ten (10) year extension periods, (a) the covenants and restrictions contained in all Articles hereof other than Articles VIII and IX may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all the Lots in The Subdivision and properly recorded in the appropriate records of Denton County, Texas and (b) the covenants and restrictions contained in Articles VIII and IX hereof may be changed or terminated only by an instrument signed by the then Owners of not less than fifty-one percent (51%) of all the Lots in the Properties and properly recorded in the appropriate records of Denton County, Texas.

Section 2. Enforcement. The Association, as a common expense to be paid out of the Maintenance Fund, or any Owner at his own expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declarant. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action any subsequent breach or default.

Section 3. Amendments by Declarant. The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development, as evidenced by this Declaration and all Supplemental Declarations, and shall not impair or affect the vested property or other rights of any Owner or his mortgagee.

Section 4. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible or more than one or conflicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration and all Supplemental Declarations shall govern.

Section 5. Omissions. If any punctuation, work, clause, sentence, or provision necessary to give meaning, validity, or effect to any other work, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provisions shall be supplied by inference.

Section 6. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

Section 8. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

ARTICLE X

Powers Granted to the Town of Trophy Club

Section 1. The Town of Trophy Club, Texas (the "Town") shall have the right to perform, but not the obligation, the maintenance obligations of the Association with respect to the Common Properties, if the Association fails to reasonably perform such maintenance obligations within ten (10) days after receipt by the Association of written notice from the Town stating the nature and extent of the Association's failure to maintain the Common Properties.

Section 2. Upon assuming such maintenance obligations, the Town may collect all maintenance assessments in accordance with the procedures specified herein and in any bylaws or articles of incorporation of the Association, expending an amount of such assessments as reasonably necessary, in the sole opinion of the Town, to perform the Association's maintenance obligations which it has failed to perform, and remitting the balance thereof to the Association forthwith.

Section 3. The Declarant and the Association understand and agree that the Covenants and Restrictions contained herein are not intended to restrict or limit the rights of the Town to exercise its legislative and governmental rights, duties and powers insofar as zoning of the Properties is concerned.

WITNESS my hand this _____ day of _____, 1996

M & M DEVELOPMENT, INC.

By: _____
John Harbin, Representative for Declarant

THE STATE OF TEXAS }
 }
COUNTY OF DENTON }

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity herein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of _____, 1996.

Notary Public, in and for the State of Texas