DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERSET ESTATES SECTION ONE

STATE OF TEXAS §

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MONTGOMERY §

This Declaration, made on the date hereinafter set forth by JTM Housing, Ltd., a Texas limited partnership hereinafter referred to as "Developer,"

W I T N E S S E T H:

WHEREAS, Developer is the owner of that certain tract of land known as "SUMMERSET ESTATES SECTION ONE " being a Subdivision of 129.849 acres of land situated in the T. & N.O.R.R. Survey, A-785, Montgomery County, Texas, according to the plat ("Plat") of said Summerset Estates Section One, recorded in the office of the County Clerk of Montgomery County, Texas, after having been approved as provided by law, and being recorded in the Map Records of Montgomery County, Texas at Cabinet T, Sheets 130 through 135, Map Records of Montgomery County, Texas (hereinafter referred to as the "Property" or the "Subdivision") and;

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against such Property in order to establish a uniform plan for the development, improvement and sale of the Property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of Lots in said Subdivision;

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon the Subdivision known as Summerset Estates Section One and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said Property, which Restrictions shall run with said Property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof, except that no part of this Declaration or the Restrictions shall be deemed to apply in any manner to the areas identified or platted as a Reserve or Unrestricted Reserve on the Plat or to any area not included in the boundaries of said Plat. Developer also declares that this Subdivision shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I

DEFINITIONS

Section 1.01. "Annexable Area" shall mean and refer to any additional property made subject to the jurisdiction of the Association pursuant to the provisions set forth herein, including, without limitation any other Sections of Summerset Estates subdivision, if any, Developer may plat and any property adjacent to or in the proximity of the Property which the Developer may wish to include in the jurisdiction of the Association.

Section 1.02 "Association" or "Summerset Estates Association" shall mean and refer to Summerset Estates Property Owners Association, a Texas Non-profit corporation currently existing for Lot owners in the Summerset Estates Subdivision.

Section 1.03 "Summerset Estates" shall mean and refer to this Subdivision and any other sections of Summerset Estates hereafter made subject to the jurisdiction of the Association.

Section 1.04 "Board of Directors" shall mean and refer to the Board of Directors of the Association or should the Developer elect to transfer control as provided herein to the Summerset Estates Association, then it shall mean and refer to the Board of Directors of Summerset Estates Association.

Section 1.05 "Builders" shall mean and refer to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

Section 1.06 "Common Area" shall mean all real property (including the improvements thereto) within the subdivision owned by the developer and/or the Association for the common use and enjoyment of the Owners and/or any other real property and improvements, including, but not limited to, roads, parks, open spaces, greenbelt areas and other facilities and areas designated on the Plat within the Common Area to which the Owners may hereafter become entitled to us.

Section 1.07 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

Section 1.08 "Developer" shall mean and refer to JTM HOUSING, LTD., with respect to the voluntary disposition of all (or substantially all) of its right, title and interest in and to the Properties. However, no person or entity merely purchasing one or more Lots from JTM Housing, Ltd. in the ordinary course of business shall be considered a "Developer."

Section 1.09 "Lot" shall mean and refer to any plot of land identified as a Lot or tract on the plat of the Subdivision (whether identified, for example, as Lot 1, 2, 3, etc.). For purposes of this instrument, "Lot" shall not be deemed to include any portion of any "Reserves," "Restricted Reserves" or "Unrestricted Reserves," (defined herein as any Reserves, Restricted Reserves or Unrestricted Reserves shown on the Plat) in the Subdivision, regardless of the use made of such area.

Section 1.10 "Dwelling" shall mean and refer to a single family home located upon a Lot; said home shall be constructed with approval of the Architectural Control Committee.

Section 1.11 "Member" shall mean and refer to every person or entity who holds a membership in the Association or, if Developer transfers control as provided herein to Summerset Estates Association, it shall mean and refer to every person or entity who holds a membership in the Summerset Estates Association.

Section 1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely as security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision Map of the Property. The plat ("Plat") of the Subdivision dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to the Property. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of the Subdivision recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, conveying said Property or any part thereof whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Montgomery County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas lines, sewers, water lines, storm drainage (surface or underground), cable television, or any other utility the Developer sees fit to install in, across and/or under the Property. Developer and its assigns further expressly reserves the right to enter upon any Lot for the purpose of constructing or maintaining any natural drainage pattern, area or easement. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Lots. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision and/or any Utility District serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, water district, political Subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Developer to any of the Lots by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water line, gas, sewer, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Lots. The Owners of the respective Lots shall not be deemed to own pipes, wires, conduits or other service lines running through their Lots which are utilized for or service other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Lot shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Lots, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Lot subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

Section 2.05 Roads and Streets. Subject to the terms and conditions of this Section 2.05, the roads and streets in this Subdivision, as shown on the Plat, are hereby dedicated in addition to public roadways, as utility easements for the purpose of constructing, operating, maintaining or repairing a system(s) of electric lighting, electrical power, telegraph and telephone lines, gas lines, sewers, water lines, storm drainage (surface or underground) cable television, or any other utilities that the Developer sees fit to install (or permit to be installed) in, across and/or under the Property.

Section 2.06 Street Lights. The Developer or the Association may elect to install street lights along one or more of the roads and streets in the Subdivision. Once any street lights are installed, the Association out of the Maintenance Charge set forth herein shall pay the cost of electricity for the operation of said lights.

Section 2.07 Natural Vegetation Easement. There shall be a natural vegetation and drainage easement area fifty feet (50') in width along the lot boundary line adjoining the right-of-way for State Highway 242 on Lots 1-3, 28-29, 42-43, 56-57 and 68-70, in Block One (1), and Lots 68-69 and 151-181 in Block Two (2) and Lot 47 in Block Three (3) of the Subdivision. The easement also extends along the boundary line adjoining the right-of-way for State Highway 242 and Restricted Reserve "F." A similar natural vegetation and drainage easement exists in an area forty feet (40') in width along the lot boundary line adjoining the right-of-way for Summerset Estates Boulevard on Lots 67 & 68 in Block Two (2) of the subdivision. No buildings, structures or other improvements, except for any required drainage swale or ditch, shall be constructed within said easements and the areas within said easements shall be left in natural vegetation. Provided, however, the Developer or the Association may erect a permanent opaque fence at least six (6') feet in height which meets the standards and requirements of the City of Conroe, Texas. The Association shall be obligated to maintain sufficient natural vegetation in this Natural Vegetation area to comply with the standards and requirements of the City of Conroe, Texas. In regards to that area mentioned above which adjoins Summerset Estates Boulevard on Lots 67 & 68 In Block Two (2) of the subdivision, the Developer or the Association may replace any natural vegetation with selected landscaping and an entrance monument or sign identifying the subdivision.

Section 2.08 Restricted Reserve E. Restricted Reserve E of the Subdivision is a common area that may be used as a park by Owners and their guests. Restricted Reserve.E will be maintained by the Developer (or after the Control Transfer Date, by the Association) and use thereof by Owners and their guests will be subject to such rules and regulations as may be from time to time promulgated by the Developer (or after the Control Transfer Date by the Association).

Section 2.09 Restricted Reserve F of Summerset Estates, Section One. The area within Reserve F of Section One of the Subdivision containing 37.28 acres of land being more fully described in that certain Summerset Estates, Section One filed in the office of the County Clerk of Montgomery County, Texas, is to be used as a site for a Detention Pond to serve the Subdivision. The purpose of dedicating the Detention Pond described above as a Common Area for drainage improvement is to comply with the drainage requirements of the city and county authorities and to create a ponding area to collect surface water runoff for all Sections of the Subdivision, which ponding area is not located upon any Lot located in the Subdivision. Upon completion of the original construction of the Detention Pond located upon the area of land described herein, by the Developer as required by the specifications and regulations of any appropriate city or county authority, the Association shall be responsible for the maintenance cost to maintain the Detention Pond and the Common Area drainage improvements to a standard required by City of Conroe, Texas, and any other governmental agency having jurisdiction thereof, shall maintain the area in an attractive, safe and clean condition at all times.

Section 2.10 Restricted Reserve G – Water Plant The area designated as Restricted Reserve G on the Plat is to be used as a water plant by the Developer or its assigns. There is a 150' sanitary sewer easement around this Restricted Reserve G, as shown on the plat. The construction and/or operation of underground petrochemical storage tanks, stock pens, feed lots, dump grounds, privies, cesspools, septic tank drain fields, drilling of improperly constructed water wells of any depth and all other construction or operation that could create an unsanitary condition within, upon or across the above described 150' sanitary control easement is prohibited. Further, tile or concrete sanitary sewers, sewer appurtenances, septic tanks and storm sewers are specifically prohibited within a 50 foot radius of the deep water well location in said Restrictive Reserve G.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any Lot or Building Site other than one single-family dwelling unit ("Dwelling") per each Lot to be used solely for residential uses. Each Dwelling shall have a fully enclosed garage for parking automobiles at all times. Garages must be built for at least one (1) vehicle and not more than three (3) vehicles. Occupancy shall be limited to one (1) family, which shall be defined as any number of persons related by blood, adoption or marriage living with not more than one (1) person who is not so related as a single household unit, or no more that two (2) persons who are not so related living together as a single household unit. It is not the intent of the Developer to exclude any individual from a dwelling who is authorized to so remain by any state or federal law. If it is found that this section, or any other section, of the Restrictions are in violation of any law, then the prohibited section shall be interpreted to be as restrictive as possible to preserve as much of the original section as allowed by law. All structures, including dwellings, garages, and workshops must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on the property and according to the guidelines adopted by the Committee. The term "dwelling" does not include single or double wide manufactured or mobile homes, or any old or used houses to be moved on the Lot or any log homes and said manufactured or mobile and used homes or log homes are not permitted within the Subdivision. All Dwellings shall have a minimum of 900 square feet of living area, excluding porches, and be built with new construction materials. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within twelve (12) months from the setting of forms for the foundation of said building or structure. The roof of any Dwelling shall be constructed of either composition shingles, copper, tile, slate, standing seam metal or other material approved by the Architectural Control Committee and according to the guidelines adopted by the Committee, prior to construction. The use of sheet metal or similar material on the roof or exterior sides of any Dwelling other than as flashing is prohibited. As used herein, the term "residential purposes" shall be construed to prohibit mobile homes, trailers, modular or manufactured homes, pre-fabricated or log homes being placed on said Lots, or the use of said Lots for duplex houses, churches, condominiums, townhouses, garage apartments, or apartment houses; and no Lot shall be used for business, educational or professional purposes of any kind whatsoever, nor for any commercial or manufacturing purposes. Provided, however, an Owner may maintain a home office in a Dwelling with no advertising signs or regular visits by customers or clients. No log siding shall be used on exterior of any Dwelling. Specifically, no Lot shall be used as a childcare or baby-sitting business.

Section 3.02 Composite Building Site. Any Owner of one or more adjoining Lots (or portions thereof) may, with prior written approval of the Architectural Control Committee, consolidate such Lots or portions into one building site, with the privilege of placing or constructing improvements on such

resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the center adjacent Lot lines as indicated to the Plat. Any such composite building site must have a frontage at the building set-back line of not less than the minimum frontage of all Lots in the same block and shall be considered one Lot for purposes of the Maintenance Charge set forth in Article VI hereof.

Section 3.03 Easements; Utilities. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded subdivision plat. Utility service may be installed along or near the front and/or side and/or rear Lot lines and each Lot Owner shall have the task and responsibility of determining the specific location of all such utilities. Except as may be otherwise permitted by the Committee (e.g. fencing, flatwork landscaping, etc.), no Owner shall erect, construct or permit any obstructions or permanent improvements of any type or kind to exist within any easement area, nor shall anything be done or permitted within an easement area which would restrict or adversely affect drainage. Electrical (and possibly other utility) easements are likely to be located at or near or along the front Lot line(s), and each Lot Owner assumes full, complete and exclusive liability and responsibility for all cost and expense related to damage, repair, relocation and restoration of any improvements or fence. Except as to special street lighting or other aerial facilities which may be required by any utility company or which may be installed by the Developer pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed on the Subdivision whether upon individual Lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Subdivision. The Association or the Architectural Control Committee shall have the right and privilege to designate the location of any CATV-related cable. Pursuant to requirements by utility company(ies) providing service to the Properties, the following provisions and covenants are to run with the land within the Subdivision with the same force and effect as all other Covenants herein and as if such provisions and covenants had originally been recited within each deed to each Lot executed and delivered by Developer:

(a) Electric service of the type known as 120/240 volt, single phase, 3 wire, 60 cycle, alternating current has been made available to the Lot hereby conveyed by means of usual electric facilities, and each Owner acknowledges for himself, his heirs, executors, administrators, successors and assigns, that electric service of any character other than that hereinabove described will not be available except at added cost to such Owner and in accordance with the rules and regulations for electric service of the subject electric utility company; and

(b) Each Owner shall assume full and complete responsibility for all costs and expenses arising out of or related to the repair, replacement or restoration of any utility equipment damaged or destroyed as a result of the negligence or mischief of any resident of the Owner. Each Owner agrees to provide, at the sole cost and expense of each Owner, such land and equipment and apparatus as are necessary and appropriate to install and maintain additional lighting and security-related measures which becomes technologically provident in the future.

Section 3.04 Location of the Improvements upon the Lot. No building of any kind shall be located on any Lot nearer to any side or rear property line, or nearer to any road or street than the building lines as set forth on the Plat of the Subdivision. Provided, however, as to any Lot, the Architectural Control Committee may waive or alter any such setback line if the Architectural Control Committee, in the exercise of the Architectural Control Committee's sole discretion, deems such waiver or alteration is necessary to permit effective utilization of a Lot. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Montgomery County, Texas. All dwellings placed on Property must be served with sewer, water and electricity. The main residential structure on any Lot shall face the front of the Lot towards the street or road, unless a deviation is approved in writing by the Architectural Control Committee.

Section 3.05 Elevation Requirements. Minimum finished slab elevation for all structures shall be at least eight (8") inches above the natural ground level and shall be above the 100 year flood plain elevation, or such other level as may be established by the Commissioner's Court or County Engineer of Montgomery County, Texas, and other applicable governmental authorities.

Section 3.06 Excavation and Tree Removal. The digging of dirt or the removal of any dirt from any Lot is expressly prohibited except as may be necessary in conjunction with the landscaping of or construction on such Lot. No trees shall be cut or removed except to provide room for construction of improvements or driveway or to remove dead or unsightly trees. No tree with a trunk diameter of three inches (3") or larger may be removed without the prior approval of the Architectural Control

Committee. Any home constructed in the subdivision must have aesthetically fitting landscaping installed within ninety (90) days of competion of construction.

Section 3.07 Swimming Pools and Spas: Swimming pools, spas, jacuzzis and hot tubs shall not encroach on any utility easement or building line shown on the recorded plat of Summerset Estates Subdivision. Swimming pools and in-ground spas must be enclosed by a six (6) foot privacy fence with locks or childproof latches on all gates. Above-ground swimming pools, spas, jacuzzis and hot tubs must have secure covers or fencing to prohibit accidental entry by children and shall not be visible from the street. If it is necessary to have water in a swimming pool during construction, then a construction fence sufficient to prevent entry by children shall be provided. Swimming pool backwash shall be allowed to encroach upon any neighboring property owner. All swimming pools, spas, jacuzzis, hot tubs, kiddie pools, fountains and other water containing objects shall be kept clean and maintained to prevent odor and breeding of mosquitoes and other pests. If pools, spas, and other water containing objects are not maintained by the Owner, the Architectural Control Committee will provide a written notice of the violation and will require the Owner to bring the Lot into compliance within a specified time. If the Owner does not comply within the time stated in the notice, the Architectural Control Committee has the authority, without being liable for trespass, to hire a third party and charge the Owner for appropriate maintenance and/or cleaning of swimming pools, spas, and other water containing objects and subsequently charge the Owner for all costs incurred. Such maintenance charges, together with interest, costs, and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the lot against which the charge is assessed. Each such charge, together with 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 when the charge was assessed.

Section 3.08 Drainage.

(a) Each Owner of a Lot agrees for himself, his heirs, legal representatives, assigns or successors-in-interest that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots in the Subdivision, and he will make adequate provisions for the drainage of his Lot in the event it becomes necessary to change the established drainage over his Lot (which provisions for drainage shall be included in the Owner's plans and specifications submitted to the Committee and shall be subject to the Committee's approval). For the purposes hereof, "established drainage" is defined as the drainage which existed at the time that the overall grading of the Subdivision, including landscaping of any Lot in the subdivision, was completed by Developer.

(b) With the approval of the Committee, an Owner may establish an alternate drainage plan for low areas by installing underground pipe and area inlets or by installing an open concrete trough with area inlets, however, the drainage plan for such alternate drainage must be submitted to and approved by the Committee prior to the construction thereof.

(c) The Subdivision has been designed and constructed utilizing surface drainage in the form of ditches and swales and, to the extent these drainage ditches and swales are located in front, side or rear Lot easements, the Owners shall not re-grade or construct any improvements or other obstruction on the Lot which adversely affects the designed drainage flow. The Owner shall be responsible for returning any drainage swale disturbed during construction or thereafter to its original line and grade, and the Owner shall be responsible for maintaining the drainage ditches or swales appurtenant to said Owner's Lot in their original condition during the term of his ownership.

Section 3.09 Driveways. Driveways shall be constructed entirely of concrete and the specifications shall be subject to the prior approval of the Committee. That portion of the driveway that lies between the front property line and the street shall be a minimum width of eight feet (8') and the driveway shall be constructed in accordance with detail, design and specifications as may be approved by the Committee.

All driveway crossings of the roadside drainage swales shall be constructed using culvert pipe in accordance with detail design and specifications as may be approved by the Montgomery County Engineer's Office and the Architectural Control Committee. All dwellings must have a driveway constructed within thirty (30 days of the completion of the main dwelling.

Section 3.10 Use of Temporary Structures and Sales Offices. No structure of a temporary character, whether trailer, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot at any time as a residence, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements within the Subdivision.

Section 3.11 Water Supply. All residential private dwellings in this Subdivision shall be served by a fresh water system provided by the Developer or private water company, which system shall be operated and continuously maintained with applicable governmental requirements. Each Owner shall be required to pay charges for connection or use of water from said system. No water wells shall be made, bored or drilled, nor any type or kind of private system installed or used unless the fresh water system to the Subdivision ceases to function and upon such occurrence, any water well must be approved by the Architectural Control Committee and any required governmental authorities. Water Wells may be drilled by the Developer or Association for use in watering common areas.

Section 3.12 Sanitary Sewers. No outside, open or pit type toilets will be permitted in this Subdivision. All Lots in this Subdivision must, prior to occupancy of a dwelling thereon, tie onto a central sanitary sewer system, and become a customer of the utility company, its successors and assigns, which shall install and operate said central sanitary sewer system for the Subdivision.

Section 3.13 Walls and Fences. Walls and fences, if any, must be approved prior to construction by the Architectural control Committee and shall be not closer to front street property lines than the front of the Dwelling on each lot and shall be six feet (6') in height. However, any fence constructed by the Developer or Association in the Natural Vegetative Easement as provided for in Section 2.07 above may be higher than six (6) feet. The erection of any wall, fence or other improvements on any utility easement adjoining any street is prohibited. All fences shall be constructed of wood and shall not be painted in any manner except for sealant. The erection of any chain link, wire, barbed wire, or mesh fence shall be prohibited. Any fences installed along the property lines by the developer and/or builder shall be considered to be owned jointly by each adjoining property owner. It shall be the joint responsibility of each such adjoining property owner to maintain, repair and replace all such fences. In the event the Architectural Control Committee notifies either owner that such fence be repaired or reconstructed, each such adjoining property owner shall share the cost in making the repairs or erecting a new fence in a style approved by the committee. The duty to maintain, repair or replace the perimeter fence constructed by the Developer or Association in the Natural Vegetative Easement as provided for in Section 2.07 above shall lie with, and be the sole responsibility of, the adjoining property owner.

Section 3.14 Mailboxes. Only mailboxes installed or approved by the United States Postal Service and approved by the Developer or, upon Transfer of Control, the Committee shall be installed

Section 3.15 Prohibition of Offensive Activities. Without expanding the permitted use of the Lots, no activity, whether for profit or not, shall be conducted on any Lot which is not related to single-family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot, which may be or become an annoyance or a nuisance to the Subdivision. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision and for home offices described in Section 3.01 hereof. Any recreational speakers, for the enjoyment of that owner's property, shall not interfere or become a nuisance to any of the surrounding neighbors. Without limitation, the discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.16 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Lot shall be used or maintained as a dumping ground for rubbish or landfill. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly and shall be stored out of public view on non-trash days. The Developer and upon Transfer of Control, the Association, shall contract with a trash collection entity and all Owners shall be required to use said entity, paying the standard charges therefore, for the disposal of garbage and trash.

Section 3.17 Vehicle Parking. Vehicles shall be parked on a driveway or parking pad in front of the Dwelling on all Lots, unless a driveway and parking pad have been constructed to the rear of the property. Driveways must be constructed entirely of concrete and shall be a minimum width of eight feet (8'). The location and specifications of driveways or parking pads shall be subject to the prior approval of the Committee.

Section 3.18 Junked Motor Vehicles Prohibited. No Lot shall be used as a depository for abandoned, junked or inoperable motor vehicles. An abandoned or junked motor vehicle is one without a current, valid state vehicle inspection sticker and license plate. An inoperable vehicle is one that is not capable of being used daily or one that is not moved from its parked position at least once every 72 hours. No junk of any kind or character, or dilapidated structure or building of any kind or character, shall be kept on any Lot. No accessories, parts or objects used with cars, boats, buses, trucks, trailers,

house trailers or the like, shall be kept on any Lot other than in a garage or other structure approved by the Architectural Control Committee.

Section 3.19 Signs. No signs, advertisement, billboard or advertising structure of any kind may be erected or maintained on any Lot without the consent in writing of the Architectural Control Committee, except (i) one (1) professionally made sign not more than thirty-six inches (36") by thirty-six inches (36") advertising an Owner's Dwelling for sale or rent, may be placed on any Lot and (ii) one (1) sign not more than thirty-six inches (36") by thirty-six inches (36") advertising the builders of the Owner's dwelling may be placed on such Lot during the construction period of such residence from the forming of the foundation until completion not to exceed a six (6) month period. Developer or any member of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Lot in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 3.20 Livestock and Animals. No pets, poultry, animals or livestock of any kind shall be raised, bred or kept on any Lot except not more than two (2) dogs or two (2) cats or other common household pets may be kept on a Lot. No reptiles or poultry of any kind shall be raised, bred or kept on any Lot. All animals shall be kept within the boundaries of the Owner's Lot unless accompanied by the Owner. No dogs, cats or household pets shall be raised, bred or maintained for any commercial purposes. In the event pets or livestock become a nuisance in the opinion of the Association or the Developer, the Owner shall remove the animals from the Lot. Any outside pen, cage, kennel, shelter, concrete pet pad, run, track or other building, structure or device directly or indirectly related to animals which can be seen, heard or smelled by anyone other than the subject Lot Owner must be approved by the Architectural Control Committee in its sole and absolute discretion. Each and every dog, cat or other household pet, if not kept and confined within the Owner's Lot, must be leashed and accompanied by its corresponding Owner, particularly when traveling beyond the perimeter of the Owner's Lot, and such Owner shall promptly clean and remove the discharge and waste of any pet. The chaining or otherwise restraining of any pet or other animal in a front yard is specifically prohibited. This prohibition shall also apply to the exposed side yard of any corner lot.

Section 3.21 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot, and, no derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. Provided, however, that this provision shall not prevent the leasing of the Subdivision or any portion thereof, for oil, gas and mineral purposes and the development of same, it being contemplated that the portion or portions of the Subdivision may be developed from adjacent lands by directional drilling operations or from the Drill Sites designated on the Plat.

Section 3.22 Lot Maintenance. All Lots, at Owner's sole cost and expense, shall be kept at all times in a neat, attractive, healthful and sanitary condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon (outside of natural vegetation areas) cut, including the front drainage ditch of said Owner or occupant's lot or lots, and shall in no event use any Lot for storage of materials or 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, and shall not burn any garbage, trash or rubbish. Provided, however, the burning of underbrush and trees during Lot clearing shall be permitted. All yard equipment or storage piles shall be kept screened by a service yard or other similar facility as herein otherwise provided, so as to conceal them from view of neighboring Lots, streets or other property. Such maintenance includes, but is not limited to the following:

a. Prompt removal of all litter, trash, refuse, and wastes.

b. Lawn mowing (outside of the natural vegetation areas).

c. Tree and shrub pruning (outside of the natural vegetation areas).

d. Keeping exterior lighting and mechanical facilities in working order.

e. Keeping lawn and garden areas alive, free of weeds, and attractive.

f. Keeping parking areas, walkways and driveways in good repair.

g. Complying with all government health and policy requirements.

h. Repainting of improvements.

i. Repair of exterior damage to improvements.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, in addition to any and all remedies, either at law or in equity, available for the enforcement of these restrictions, without liability to the Owner, Builder or any occupants of the Lot in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Lot, to cut, or cause to be cut, such weeds and grass and remove, or cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner, Builder or occupant of such Lot for the cost of such work and associated materials, plus a fee of $10.00 per month for each instance. Payment thereof shall be collected as an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.23 Exterior Maintenance of Building. In the event the Owner of any building in the Subdivision should allow such building to fall into disrepair and become in need of paint, repair or restoration of any nature and become unattractive and not in keeping with the neighborhood, the Association and/or the Developer will give such owner written notice of such conditions. Fifteen (15) days after notice of such condition to Owner, and failure of owner to begin and continue at a diligent, reasonable rate of progress to correct such condition, the Association and/or the Developer in addition to any and all remedies, either at law or in equity, available for the enforcement of these Restrictions, may at its sole discretion enter upon said premises, without liability to Owner, to do or cause to be done any work necessary to correct said situation. The Owner thereof shall be billed for cost of necessary repairs, plus ten (10%) percent.
All monies so owed the Association will be an additional Maintenance Charge and shall be payable on the first day of the next calendar month.

Section 3.24 Views, Obstructions and Privacy. In order to promote the aesthetic quality of "view" within the Subdivision, the Committee shall have the right to review and approve any item placed on a Lot including, but not limited to the following:

a. The location of all windows and the type of proposed window treatments and exposed window coverings;

b. The probable view from balconies and decks (particularly where there is potential invasion of privacy to an adjoining neighbor);

c. Sunlight obstructions;

d. Roof top solar collectors;

e. Flagpoles, flags, pennants, ribbons, streamers, wind sock and weather vanes;

f. Exterior storage sheds;

g. Fire and burglar alarms, which emit lights and sounds;

h. Children playground or recreational equipment (to be located in rear of Dwelling only);

i. Exterior lights;

j. Ornamental statuary, sculpture and/or yard art visible from a street or common area excluding those, which may be a part of an otherwise, approved landscape plan;

k. The location of the Dwelling on the Lot; and

l. The location of satellite dishes and antennas (to be located in rear of Dwelling only).

Prohibited Items. The following items are prohibited on any Lot:

a. Clotheslines, reels, hanging circles and other exterior clothes drying devices;

b. Window unit air conditioners, unless approved by the Committee in writing prior to installation;

c. Signs (except for signs permitted in Section 3.19 hereof);

d. Storage of more than five (5) gallons of fuel outside of regular vehicle gas tanks; and

e. Unregistered, unlicensed or inoperable motor vehicles.

Section 3.25 Antennas and Satellite Dishes. No electronic antenna or devise for receiving or transmitting any signal other than an antenna for receiving normal television, marine signals, citizens band signals, cellular telephone signals or ham radio signals shall be erected, constructed, placed or permitted to remain on any Lot, house, garage or other buildings unless otherwise approved by the Committee. The Committee's decision shall be final.

Unless approved by the Committee, no satellite dish may be maintained on any portion of any Lot outside the building lines of said Lot or forward of the front of the improvements thereon. A ground satellite dish may not exceed four (4') feet in diameter and must be mounted as close to the ground as practical. However, in no event may the top of the satellite dish or antenna be higher than six (6') feet from the grade level of the ground or more than two (2') feet above the roofline for roof mounted satellite dishes. All house or roof mounted satellite dishes shall not exceed thirty-nine inches (39") in diameter. All dishes shall be of one solid color of black or earth tones of brown, gray, or tan. No multicolored dishes shall be permitted. No advertising or the printing of names of any type shall be permitted. Not more than one satellite dish will be permitted on each Lot. No transmitting device of any type, which would cause electrical or electronic interference in the neighborhood, shall be permitted. Architectural approval is required prior to the installation of any satellite dish. The Association reserves the right to seek the removal of any device that was installed without first obtaining approval or any dish that violates these restrictions.

Section 3.26 Solar Panels. All Solar Panels installed shall be framed in such a manner so the structure members are not visible. The framing material shall be one that is in harmony with the rest of the structure. Architectural approval from the Committee is required prior to the installation of any solar panels. The Association reserves the right to seek the removal of any solar panel that was installed without first obtaining approval or for any solar panel that violates these restrictions.

Section 3.27 Wind Generators. No wind generators shall be erected or maintained on any Lot if said wind generator is visible from any other Lot or public street.

Section 3.28 Miscellaneous Use Restrictions. Without limiting the foregoing, the following restrictions shall apply to all Lots:

i) No boat, jet-ski, aircraft, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the front of any Dwelling, nor shall any such vehicle or equipment be parked for storage to the side or rear of any Dwelling unless completely concealed from public view. All boats so parked or stored on any Lot must at all times also be stored on a trailer. No such vehicle or equipment shall be used as a residence either temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a Dwelling in the Subdivision.

ii) Trucks with tonnage in excess of one and one-half tons shall not be permitted to park overnight within the Subdivision except those used by a builder during the construction of improvements on Lots in the Subdivision.

iii) No vehicle of any size, which transports inflammatory or explosive cargo, may be kept in the Subdivision at any time.

iv) No vehicles or similar equipment shall be parked or stored in an area visible from any public street or road except passenger automobiles, passenger vans, motorcycles and pick-up trucks that

are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas.

Section 3.29 Hazardous Substances. No Lot shall be used or maintained as a dumping ground for rubbish or trash and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition. Notwithstanding the foregoing, no Hazardous Substance shall be brought onto, installed, used, stored, treated, buried, disposed of or transported over the Lots or the Subdivision, and all activities on the Lots shall, at all times, comply with Applicable Law. The term "Hazardous Substance" shall mean any substance which, as of the date hereof, or from time to time hereafter, shall be listed as "hazardous" or "toxic" under the regulations implementing The Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§9601 et seq., The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 et seq., or listed as such in any applicable state or local law or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under applicable law. The term "Applicable Law" shall include, but shall not be limited to, CERCLA, RCRA, The Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq. and any other local, state and/or federal laws or regulations that govern the existence, cleanup and/or remedy of contamination on property, the protection of the environment from spill deposited or otherwise in place contamination, the control of hazardous waste or the use, generation, transport, treatment, removal or recovery of hazardous substances, including building materials.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control

(a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced, or changes made in the design or exterior appearance thereof, or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Lot in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specifications for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument, quality of materials, drainage, harmony of external design and color with existing and proposed structures and location with respect to topography and finished grade elevation.

(b) Each application made to the Committee shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alterations) to be done on such Lot, including the drainage plan for the Lot, plot plans showing the location and elevation of the improvements on the Lot and dimensions of all proposed walkways, driveways, and all other matters relevant to architectural approval. The address of the Committee shall be the address of the principal office of the Developer or the Association. If approved, one of the two sets of plans submitted shall be returned to the Owner with said approval noted thereon. The Committee may set a reasonable application fee.

Section 4.02 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. The term "Committee," as used in this Declaration, shall mean or refer to the Developer or to Summerset Estates Architectural Control Committee composed of members of the Association, as applicable.

(b) At such time as one hundred percent (100%) of all of the Lots in the Subdivision are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer at its sole option shall cause an instrument transferring control to either the Summerset Estates Association or Association to be placed of record in the Real Property Records of Montgomery County, Texas (which instrument shall include the Control Transfer Date). In the event the Developer

elects to transfer control to Association, the Board of Directors of the Association shall elect a committee of three (3) members to be known as Summerset Estates Architectural Control Committee. From and after the Control Transfer Date, at least two (2) members of the Committee must be Owners of property in Summerset Estates. Additionally, the Developer shall have the right to discontinue the exercise of architectural control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to such effect in the Real Property Records of Montgomery County, Texas.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters, as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submission, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reason of the good faith exercise thereof.

Section 4.05 Minimum Construction Standards. The Developer or the Committee may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline only and the Developer or Committee shall not be bound thereby.

Section 4.06 Variance. The Developer or by at least a majority of the members of the Committee, upon the Transfer control Date, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, Lot configuration, Lot size, hardship, aesthetic or environmental considerations may require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines, minimum square footage of the residence, fences, and other items. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall the granting of any variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

Section 4.07 Terminology and Authority. The Developer, in Section 7.04 hereof, has retained the exclusive right and power to transfer control for architectural control as well as other rights of Developer hereunder to the Association and upon Developer's execution of the instrument transferring such control and recording same in the Real Property Records of Montgomery County, Texas, all rights, powers and duties of the Committee or the Association throughout these Restrictions shall be vested in the Association and all references herein to the "Committee" shall be to the Architectural Control Committee for the Association to which the Developer transfers control.

ARTICLE V

SUMMERSET ESTATES PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any Lot, which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, including contract sellers, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as

security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Lot owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Lots. Regardless of the number of persons who may own a Lot (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Lot. Additionally, the Directors of the Association shall also be Members of the Association (as more particularly described in the By-laws). Ownership of the Lots shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association.

Section 5.02 Non-Profit Corporation. Summerset Estates Property Owners Association, Inc., a non-profit corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

If, for any reason, The Developer shall fail to form the required non-profit Association within one (1) year of the date on which these covenants are recorded, any Lot Owner within the subdivision may cause such Association to be formed and the initial Board of Directors shall be elected by the majority vote of the Lot Owner's within the Subdivision.

If no Association is formed, the City Council of the City of Conroe, Texas, shall be authorized, but not required to exercise the powers of the Association, including the maintenance and assessment power authorized herein.

Section 5.03 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 Members' Right of Enjoyment. Every Member shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Members;

(b) the right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;

(c) the right of the Association, in accordance with its Articles and Bylaws (and subject to the prior written approval of the Declarant), to (i) borrow money for the purpose of improving and maintaining the streets and roads within the Subdivision, Common Area and facilities (including borrowing from the Declarant or any entity affiliated with the Declarant) and (ii) mortgage said property, however, the rights of such mortgage of said property shall be subordinate to the rights of the Owners hereunder;

(d) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users'" (as herein defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;

(e) the right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Trustees, for the infraction or violation by such Member or Related Users of this Declaration or the rules and Regulations, which suspension shall continue for the duration or such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation; and

(f) the right of the Association, subject to the prior written approval of the Declarant, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, for such purposes and subject to the provisions of Section 8.13.

Section 5.05 Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his "family" (defined herein as those members of the Member's immediate family living in the Member's residence), his tenants, or contract purchasers who reside on the Property (collectively, the "Related Users"). If a Member leases

his Lot to a tenant, the tenant, but not the Member, shall have the exclusive privilege of enjoyment of the Common Area and facilities of the Association during the term of said tenant's tenancy.

Section 5.06 Rental and Leasing. In no event shall any renting or leasing of residences be allowed unless the owner affirmatively obligates all tenants and other residents of the Lot to abide by this Declaration, the Bylaws, and the Rules and Regulations of the Association.

Section 5.07 Inspection Records. The members of the Association shall have the right to inspect the books and records of the Association at reasonable times during normal business hours.

ARTICLE VI

MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each Owner of a Lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association, in advance, an annual maintenance charge on January 10th of each year, (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made. It shall be the duty of the Board of Directors to assess and collect the maintenance charge established by this Article and to utilize such funds for the maintenance and upkeep of the privately dedicated subdivision improvements located within the subdivision. If, for any reason, the Board of Directors shall fail to provide for the assessment and collection of such maintenance fee, or for the proper maintenance and upkeep of the privately dedicated subdivision improvements, then, the City Council of the City of Conroe, Texas, shall be authorized, but not required, to exercise such power in the place of the Board of Directors. In the event the City of Conroe, Texas shall advance its own funds to defray expenses of maintenance of the privately dedicated subdivision improvements, the City shall be entitled to reimbursement from the maintenance fund and may increase the maintenance assessment as necessary to insure repayment.

Section 6.02 Basis of the Maintenance Charge

(a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association annually, in advance, on or before the tenth day of the first month of each calendar year, or on such other basis (monthly, quarterly or semi-annually) as the Developer or the Board of Directors of the Association may designate in its sole discretion. The amount of the Maintenance Charge shall initially be $125.00 per Lot per year until a different amount is otherwise designated by the Board of Directors of the Association. Provided, however, in the event an Owner obtains consent from the Committee for a Composite Building Site pursuant to Section 3.02 hereof, such Composite Building Site shall be considered one Lot for the Maintenance.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.

(c) The exact amount of the Maintenance Charge applicable to each Lot will be determined by the Developer until the Transfer Control Date, and, thereafter by the Board of Directors of the Association during the month preceding the due date of the Maintenance Charge. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof. After the Transfer of Control, the Board of Directors of the Association may only increase the amount of the Maintenance Charge up to twenty-five percent (25%) in any given year over the previous year's amount without amending this declaration pursuant to Section 9.02 below.

(d) The Maintenance Charge described in this Article VI and other charges or assessments described in this Declaration shall not apply to the Lots owned by the Developer. The Developer, prior to the Control Transfer Date, and the Association, from and after the Control Transfer Date, reserve the right at all times in their own judgment and discretion, to exempt any Lot ("Exempt Lot"), in the Subdivision from the Maintenance Charge, in accordance with Section 6.07 hereof. If an Exempt Lot is sold to any party, the Maintenance Charge shall be automatically reinstated as to the Exempt Lot and can only be waived at a later date pursuant to the provisions of the preceding sentence. The Developer, prior to the Control Transfer Date, and the Association from and after the Control Transfer Date, shall have the further right at any time, and from time to time, to adjust or alter said Maintenance Charge from month to month as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, a vendor's (purchase money) lien for the benefit of the Association, shall be and is hereby reserved in the deed from the Developer to the purchaser of each Lot or portion thereof, which lien shall be enforceable through appropriate judicial and non-judicial proceedings by the Association. As additional security for the payment of the Maintenance Charge and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of a written instrument executed by the President or any Vice-President of the Association and filed for record in the Real Property Records of Montgomery County, Texas. In the event that the Association has determined to nonjudicial foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association shall mail to the defaulting Owner a copy of the Notice of Trustee's Sale not less than twenty-one (21) days prior to the date on which said sale is scheduled by posting such notice through the U.S. Postal Service, postage prepaid, certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. If required by law, the Association or Trustee shall also cause a copy of the Notice of Trustee's Sale to be recorded in the Real Property Records of Montgomery County, Texas. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorneys' fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of nonpayment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property Code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Montgomery County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code. Any failure of the Board of Directors of the Association to amend this document to comply with said Texas Property Code shall not render this section void. In that event, the provisions of the Texas Property Code shall control.

Section 6.04 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest and costs of collection, including reasonable attorneys' fees, which have accrued thereon, (c) the legal description and street address of the Lot

against which the lien is claimed and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Liens Subordinate to Mortgages. The liens described in this Article VI and the superior title herein reserved shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or other bona fide, third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such transferee of title to a Lot from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee listed at the time of the initial closing sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

Section 6.06 Purpose of the Maintenance Charge. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision and other portions of the Annex able Area, which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VIII, including the operation and maintenance of street lights, if any, the maintenance of the Common Areas, or Detention Ponds or Drainage Easements, and the establishment and maintenance of a reserve fund for maintenance of the Common Areas, or Drainage Easements. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Developer or Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Areas, etc. as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6.07 Exempt Property. The following property subject to this Declaration shall be exempt from the Maintenance Charge and all other charges and assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all properties owned by the Developer or the Association or a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas; however, no land or improvements devoted to dwelling use shall be exempt from said Maintenance Charge.

Section 6.08 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually, information on the Maintenance Fund as provided in Section 8.07 hereof.

ARTICLE VII

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 7.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and any Common Areas from the date hereof, until the earlier to occur of (i) the Control Transfer date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Lot by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Developer's Rights to Grant and Create Easements. Developer shall have and hereby reserves the right, without the consent of any other Owner or the Association, to grant or create temporary or permanent easements, for access, utilities, pipeline easements, cable television systems, communication and security systems, drainage, water and other purposes incident to development, sale, operation and maintenance of the Subdivision, located in, on, under, over and across (i) the Lots or other property owned by Developer, (ii) the Common Area, and (iii) existing utility easements. Developer also reserves the right, without the consent of any other Owner or the Association, to (i) grant or create temporary or permanent easements for access over and across the streets and roads within the Subdivision to and from Huffsmith-Dobbin Road or other public roads for the benefit of owners of property, regardless of whether the beneficiary of such easements own property which is hereafter made subject to the jurisdiction of the Association and (ii) permit owners of property within the Annex able Area which is not made subject to the jurisdiction of the Association to use the recreational facilities of the Association and other Common Area, provided that said owners pay to the Association their proportionate share of the cost of operating and maintaining said recreational facilities and Common Areas.

Section 7.03 Annexation of Annexable Area. Additional residential property and common areas outside of the Subdivision including, without limitation, the Annexable Area, may, at any time and from time to time, be annexed by the Developer into the real property which becomes subject to the jurisdiction and benefit of the Association, without the consent of the Owners or any other party; provided, however, such additional residential property outside of the Annexable Area may be made subject to the jurisdiction of the Association by the Developer. The owners of Lots in such annexed property, as well as all other Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Areas that are or may become subject to the jurisdiction of the Association, provided that such annexed property is impressed with and subject to at least the Maintenance Charge imposed hereby.

Section 7.04 Developer's Right to Transfer Control. The Developer hereby retains the exclusive right and power to transfer control for architectural control as well as other rights of Developer hereunder to the Association, and upon Developer's execution of the instrument transferring such control and recording same in the Real Property Records of Montgomery County, Texas, all rights, powers and duties of the "Committee" or the "Association" throughout these Restrictions shall be vested in the Association and all references herein to the "Committee" shall be to the Architectural Control Committee for said Association.

ARTICLE VIII

DUTIES AND POWERS OF THE PROPERTY OWNERS ASSOCIATION

Section 8.01 General Duties and Powers of the Association. The Association has been formed to further the common interest of the Members. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interest of the members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness, desirability and safety of the Subdivision and any portion of the Annex able Area which becomes

subject to the jurisdiction of the Association. The Association shall have the authority to act as the agent to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in this Declaration.

Section 8.02 Duty to Accept the Property and Facilities Transferred by Developer. The Association shall accept title to any real property, including any improvements thereon and personal property transferred to the Association by Developer, and equipment related thereto, together with the responsibility to perform any and all administrative functions and recreation functions associated therewith (collectively herein referred to as "Functions"), provided that such property and Functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Developer may include fee simple title, easements, leasehold interests and licenses to use such property. Any property or interest in property transferred to the Association by Developer shall be within the boundaries of the Property or Annex able Area. Any property or interest in property transferred to the Association by Developer shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens and mortgages (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, the terms of any declaration of covenants, conditions and restrictions annexing such property to the Common Area, and all easements, covenants, conditions, restrictions and equitable servitude or other encumbrances which do not materially affect the Owners authorized to use such property. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by the Developer shall impose upon the Association any obligation to make monetary payments to Developer or any affiliate of Developer including, but not limited to, any purchase price, rent, charge or fee. The property or interest in property transferred to the Association by Developer shall not impose any unreasonable or special burdens of ownership of property, including the management maintenance, replacement and operation thereof.

Section 8.03 Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Private Streets, Common Areas and keep the same in a safe, attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Private Streets and Common Areas shall include, but not be limited to the following: establishment, operation and maintenance of a security system, if any, for the Subdivision; maintenance, repair and replacement of the drainage easements; mowing of street right-of-ways and other portions of the Subdivision; and management, maintenance, repair and upkeep of the Private Streets and Common Areas.

Section 8.04 Other Insurance Bonds. The Association shall obtain such insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 8.05 Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund for the maintenance of all Common Areas.

Section 8.06 Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in this Declaration.

Section 8.07 Duty to Provide Annual Review. The Association shall provide for an annual unaudited independent review of the accounts of the Association. Copies of the review shall be made available to any Member who requests a copy of the same upon payment by such Member of the reasonable cost of copying the same.

Section 8.08 Duties with Respect to Architectural Approvals. The Association shall perform functions to assist the Committee as elsewhere provided in Article IV of this Declaration.

Section 8.09 Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases) for the common benefit of Owners including improvements and personal property. The Association may construct improvements on the Property and may demolish existing improvements.

Section 8.10 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations ("Rules and Regulations"), fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the

Common Areas, and the use of any other property, facilities or improvements owned or operated by the Association.

Section 8.11 Power to Enforce Restrictions and Rules and Regulations. The Association (and any Owner with respect only to the remedies described in (ii) below) shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action, as the Board of Directors deems necessary or desirable to cause such compliance by each Member and each Related User. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and of Rules and Regulations of the Association by any one or more of the following means: (i) By entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of this Declaration or the Rules and Regulations; (ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations; (iii) by exclusion, after notice and hearing, of any Member of Related User from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of this Declaration or such Rules and Regulations by such Member or any Related User, unless the breach is a continuing breach in which case exclusion shall continue for so long as such breach continues; (iv) by suspension, after notice and hearing, of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of a provision of this Declaration or such Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (v) by levying and collecting, after notice and hearing, an assessment against any Member for breach of this Declaration or such Rules and Regulations by such Member or a Related User which assessment reimbursed the Association for the costs incurred by the Association in connection with such breach; (vi) by levying and collecting, after notice and hearing, reasonable and uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or such Rules and Regulations by such Member or a Related User; and (vii) by taking action itself to cure or abate such violation and to charge the expenses thereof, if any, to such violating Members, plus attorneys' fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give registered or certified notice of such alleged violation to Owner, and shall afford the Owner a hearing. If, after the hearing, a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association, the Developer, or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of their right to take enforcement action thereafter or upon a subsequent breach or default.

Section 8.12 Power to Grant Easements. In addition to any blanket easements described in this Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area. Additionally, the Association, from and after the Control Transfer Date, shall have the power to grant access, utility, drainage, water facility and other similar easements in, on, over and under Lots provided that such easements do not unreasonably interfere with the rights of the Owner of such Lots.

Section 8.13 Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised (i) prior to the Control Transfer Date by the Board of Directors and (ii) from and after the Control Transfer Date by the Association, with the approval of not less than two-thirds (2/3rds) of the Members agreeing in writing or by voting at any scheduled meeting of the Members and with the prior written approval of the Developer. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01 Term. The provisions hereof shall run with all property in the Subdivision and shall be binding upon all Owners and all persons claiming under them for a period of forty (40) years from the date this Declaration is recorded, after which time said Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by not less than three-fourths (3/4ths) of the then Owners (including the Developer) of the Lots has been recorded agreeing to cancel, amend or change, in whole or in part, this Declaration.

Section 9.02 Amendments. This Declaration may be amended or changed, in whole or in part, at any time by the written agreement or signed ballot of Owners (including the Developer) entitled to cast not less than three-fourths (3/4ths) of the votes of all of the Owners. If the Declaration is amended by a written instrument signed by those Owners entitled to cast not less than three-fourths (3/4ths) of all of the votes of the Owners of the Association, such amendment must be approved by said Owners within three hundred sixty-five (365) days of the date the first Owner executes such amendment. The date an Owner's signature is acknowledged shall constitute prima facia evidence of the date of execution of said amendment by such Owner. Those Members (Owners, including the Developer) entitled to cast not less than three-fourths (3/4ths) of all of the votes of the Members of the Association may also vote to amend this Declaration, in person, or by proxy, at a meeting of the Members (Owners, including the Developer) duly called for such purpose, written notice of which shall be given to all Owners at least ten (10) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting. Notwithstanding any provision contained in the Bylaws to the contrary, a quorum, for purposes of such meeting, shall consist of not less than seventy percent (70%) of all of the Members (in person or by proxy) entitled to vote. Any such amendment shall become effective when an instrument is filed for record in the Real Property Records of Montgomery County, Texas, accompanied by a certificate, signed by a majority of the Board of Trustees, stating that the required number of Members (Owners, including the Developer) executed the instrument amending this Declaration or cast a written vote, in person or by proxy, in favor of said amendment at the meeting called for such purpose. Copies of the written ballots pertaining to such amendment shall be retained by the Association for a period of not less than three (3) years after the date of filing of the amendment or termination. Provided, however, any amendment regarding the Detention Pond provided for in Section 2.09 hereof and the maintenance thereof or the Natural Vegetation Easement provided for in Section 2.07 hereof and the maintenance thereof shall require the express written consent of the City of Conroe, Texas.

Section 9.03 Amendments by the Developer. The Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, oversight, 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 shall not impair or adversely affect the vested property or other rights of any Owner or his mortgagee. Additionally, Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner of other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of permitting the Owners to enjoy the benefits from technological advances, such as security, communications or energy-related devices or equipment which did not exist or were not in common use in residential Subdivisions at the time this Declaration was adopted. Likewise, the Developer shall have and reserves the right at any time and from time to time prior to the Control Transfer Date, without the joinder or consent of any Owner or other party, to amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record for the purpose of prohibiting the use of any device or apparatus developed and/or available for residential use following the date of this Declaration if the use of such device or apparatus will adversely affect the Association or will adversely affect the property values within the Subdivision.

Section 9.04 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

Section 9.05 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that (i) prior to the Control Transfer Date any such merger or consolidation shall be approved (in writing or at a meeting duly called for such
purpose) by three-fourths (3/4ths)) of the Directors and (ii) from and after the Control Transfer Date any such merger or consolidation shall have the consent (in writing or at a meeting duly called for such

purpose) of those Members entitled to cast not less than three-fourths (3/4ths) of the votes of all of the Members of the Association and the Developer.

Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, the properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the properties, rights and obligations of the other association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to the merger. The surviving or consolidated association will be subject to the covenants and restrictions established by this declaration within the Subdivision, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this Declaration, except as changed by amendment of this Declaration or by the plan of merger or consolidation. In the event of any inconsistency between the terms and provisions of this Declaration and the terms and provisions of any of the merger or consolidation documents, the terms and provisions of this Declaration shall control.

Section 9.06 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

Section 9.07 Successors and Assigns. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Developer and the Association, and their respective heirs, legal representatives, executors, administrators, successors and assigns.

Section 9.08 Effect of Violations on Mortgages. No violation of the provisions herein contained, or any portion thereof, shall affect the lien of any mortgage or deed of trust presently or hereafter placed of record or otherwise affect the rights of the mortgagee under any such mortgage, the holder of any such lien or beneficiary of any such deed of trust; and any such mortgage, lien, or deed of trust may, nevertheless, be enforced in accordance with its terms, subject, nevertheless, to the provisions herein contained.

Section 9.09 Terminology. All personal pronouns used in this Declaration and all exhibits attached hereto, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Title of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration itself. The terms "herein," "hereof" and similar terms, as used in this instrument, refer to the entire agreement and are not limited to referring only to the specific paragraph, section or article in which such terms appear. All references in this Declaration to Exhibits shall refer to the Exhibits attached hereto.

Section 9.10 Effect on Annexable Area. The provisions of this Declaration do not impose any restrictions whatsoever or otherwise encumber the Annexable Area, unless and until portions of the Annexable Area are made subject to the jurisdiction of the Association by a separate instrument executed solely by Developer or its successors and assigns and any lienholder, which instrument is recorded in the Real Property Records of Montgomery County, Texas.

Section 9.11 Developer's Rights and Prerogatives. Prior to the Control Transfer Date, the Developer may file a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for the Developer's (ii) discontinuance of the exercise of any right or prerogative provided for in this Declaration to be exercised by the Developer or (i) assignment to any third party owning property in the Subdivision or Annexable Area, of one or more of Developer's specific rights and prerogatives provided in this Declaration to be exercised by Developer. The assignee designated by Developer to exercise one or more of Developer's rights or prerogatives hereunder shall be entitled to exercise such right or prerogative until the earlier to occur of the (i) Control Transfer Date or (ii) date that said assignee files a statement in the Real Property Records of Montgomery County, Texas, which expressly provides for said assignee's discontinuance of the exercise of said right or prerogative. From and after the date that the Developer discontinues its exercise of any right or prerogative hereunder and/or assigns its right to exercise one or more of its rights or prerogatives to an assignee, the Developer shall not incur any liability to any Owner, the Association or any other party by reason of the Developer's discontinuance or assignment of the exercise of said right(s) or prerogative(s). Upon the Developer's Assignment of its rights as of the Transfer Control Date to the Association, the Association shall be entitled to exercise all the rights and prerogatives of the Developer.

IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand as of this_____day of _____, 2003.

JTM HOUSING, LTD.

By_____
Name_____
Title_____

STATE OF TEXAS §

COUNTY OF MONTGOMERY §

This instrument was acknowledged before me on the_____day of _____, 2003, by _____, _____ of JTM HOUSING, LTD., in the capacity therein stated.

_____
Notary Public, State of Texas