

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
SUMMERFIELD, SECTION ONE

THE STATE OF TEXAS     §  
  §  
COUNTY OF FORT BEND   §

This Declaration, made on the date hereinafter set forth by Pheasant Creek, Ltd., a Texas Limited Partnership, hereinafter referred to as "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of that certain property known as SUMMERFIELD, SECTION ONE, according to the map or plat thereof (the "Plat") recorded in Slide No. 1294 A+B, of the map records of Fort Bend County, Texas, which property is more particularly described on Exhibit "A" attached hereto and made part hereof for all purposes (herein sometimes referred to as the "Subdivision"), and

WHEREAS, it is the desire of Declarant to place certain restrictions, covenants, conditions, stipulations and reservations upon and against the Property in order to establish a uniform plan for the development, improvement and sale of such 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, Declarant hereby adopts, establishes and imposes upon SUMMERFIELD, 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 land, which reservations, easements, covenants, restrictions and conditions shall run with said land and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

SECTION 1.01. "Association" shall mean and refer to SUMMERFIELD HOMEOWNERS ASSOCIATION, INC., a Texas nonprofit corporation formed or to be formed and its successors and assigns.

SECTION 1.02. "Builders" shall mean and refer to each Owner who is in the construction business or a person, corporation, partnership or any other legal entity regularly engaging in the construction business who is constructing improvements for an Owner.

SECTION 1.03. "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners.

SECTION 1.04. "Declarant" shall mean and refer to Pheasant Creek, Ltd., and its successors and assigns. All persons or entities acquiring more than one (1) undeveloped Lot (as opposed to the purchase

of finished Lots) from the Declarant for the purpose of development shall be deemed to be successors and assigns of Declarant.

SECTION 1.05. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property.

SECTION 1.06. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 1.07. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.08. "Property" shall mean and refer to that certain real property comprising the Subdivision and any additional property made subject to the terms hereof pursuant to the provisions set forth herein.

## ARTICLE II

### RESERVATIONS, EXCEPTIONS AND DEDICATIONS

SECTION 2.01. RECORDED SUBDIVISION MAP OF THE PROPERTY. The Plat dedicates for use as such, subject to the limitations as set forth therein, the streets and easements shown thereon, and the Plat further establishes certain restrictions applicable to the Property including, without limitation, certain minimum setback lines. All dedications, restrictions and reservations shown on the Plat or a replat of the Subdivision hereafter recorded shall be incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed, or conveyance executed or to be executed by or on behalf of Declarant, conveying said Property or any part thereof whether specifically referred to therein or not.

SECTION 2.02. EASEMENTS. Declarant reserves for public use the easements and rights-of-way shown on the Plat of the Property for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, or any other utility Declarant sees fit to install in, across and/or under the Property. Notwithstanding anything to the contrary contained in this Section 2.02, no sewers, electrical lines, waterlines, or other utilities may be installed on said Property except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Associations' Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said Property without conflicting with the terms hereof. Neither Declarant nor any utility company using the easements herein referred to shall be liable for any damages done by them or their assigns, their agents, employees, or servants, to fences, shrubbery, trees and flowers or any other property of the Owner on the land covered by said easements.

SECTION 2.03. TITLE SUBJECT TO EASEMENTS. It is expressly agreed and understood that the title conveyed by Declarant to any of the Property by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone purposes. The Owners of the respective Lots shall not be deemed to separately 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.

ARTICLE III

USE RESTRICTIONS

SECTION 3.01. SINGLE FAMILY RESIDENTIAL CONSTRUCTION AND USE. No building shall be erected, altered, or permitted to remain on any Lot other than one detached single family dwelling used for residential purposes only and not to exceed two (2) stories in height and with private off-street parking facilities for not less than two (2) or more than three (3) cars. As used herein, the term "single family residential purposes" shall be deemed to specifically prohibit, by way of illustration but without limitation, the use of any Lot for a duplex apartment, a garage apartment or any other apartment for any multi-family use or for any business, educational, church, professional or other commercial activity of any type; provided, however, that notwithstanding any provision contained herein to the contrary an Owner may use a portion of his residence as a personal office for a profession or occupation, provided:

- (a) the public is not invited, permitted, or allowed to enter the residence or any structure or improvement upon such Lot and conduct business therein;
- (b) there is no increase in traffic in the community affiliated in any respect with the personal office;
- (c) no signs advertising such profession or business are permitted;
- (d) no on-site employees are permitted;
- (e) no offensive activity or condition, noise and/or odor are permitted;
- (f) no residential address may be utilized for advertising purposes or referenced in the business directory of a telephone book;
- (g) the outward appearance of a residence shall not evidence in any manner such profession or business; and
- (h) such use in all respects complies with the laws of the State of Texas, local ordinances, and the laws, rules and regulations of any regulatory body or governmental agency having authority and jurisdiction over such matters, and conforms to public policy considerations.

The term "single family residential purposes" shall also be defined as: (a) one or more persons related by blood, marriage, or adoption, which may include only parents, their children (including foster children and wards), their dependent brothers and sisters, their dependent parents, their dependent grandparents, and their domestic servants; (b) no more than two (2) unrelated persons living together as a single housekeeping unit and their children (including foster children and wards), their dependent brothers or sisters, their dependent parents, their dependent grandparents, and their domestic servants; and (c) in no event, shall

any single family residence be occupied by more persons than the product of the total number of bedrooms contained in the single family residence as originally constructed multiplied by two (2).

SECTION 3.02. MINIMUM SQUARE FOOTAGE WITHIN IMPROVEMENTS. The living area of the main residential structure (exclusive of porches, garages and servants quarters) facilities shall be not less than One Thousand Two Hundred (1,200) square feet.

SECTION 3.03. MASONRY/BRICK VENEER. The construction of any residence shall involve the use of not less than seventy-five percent (75%) brick veneer, stone or other masonry around the outside perimeter of the ground floor of the building's first floor wall area to the top of the first floor window height and exclusive of openings.

SECTION 3.04. ROOF MATERIAL. The roof of any home constructed shall be constructed or covered with asphalt or composition type shingles comparable in color to wood shingles. The decision of such comparison shall rest exclusively with the Architectural Control Committee. Any other type of roofing material shall be permitted only at the sole discretion of the Architectural Control Committee upon written request.

SECTION 3.05. SIDEWALKS. A concrete sidewalk four (4) feet wide shall be constructed parallel to the curb two (2) feet from the property line along the entire front of all Lots. In addition thereto, four (4) foot wide sidewalks shall be constructed parallel to the curb two (2) feet from the property line along the entire side of all corner Lots, and the plans for each residential building on each of said Lots shall include plans and specifications for such sidewalks and same shall be constructed and completed before the main residence is occupied. In the case of a corner Lot, the front and side sidewalks shall each extend to the street curb, and shall provide curb ramps for the handicapped. All sidewalks shall be constructed in accordance with the requirements of all applicable governmental regulations relating to sidewalks.

SECTION 3.06. LOCATION OF IMPROVEMENTS UPON THE LOT. No building shall be located on any Lot nearer to the front line or nearer to the street side line than the minimum building setback line shown on the Plat or any replat; however, in no instance shall a building be located nearer to the front property line than fifteen (15) feet. The main residential structure shall be located not less than ten (10) feet from the rear property line. The main residential structure on any type of Lot shall face the front of the Lot. INTERIOR LOT LINE SETBACK - NORMAL LOT LINE PLAN: No residence shall be located nearer than five (5) feet to an interior lot line, except that a detached garage or other permitted accessory building may be located within three (3) feet of an interior lot line. For purposes of this covenant, eaves, steps, and open porches shall not be considered as part of a residential structure.

SECTION 3.07. COMPOSITE BUILDING SITE. Subject to the approval of the Architectural Control Committee, any Owner of one or more adjoining Lots or portions thereof may consolidate or redivide such Lots or portions into one or more building sites with the privilege of placing or constructing improvements on such resulting sites, in which case the side setback lines shall be measured from the resulting side

property lines rather than from the Lot lines as indicated on the Plat. Any such resulting building site must have a frontage at the building setback lines of not less than the minimum frontage of the Lots in the same block.

**SECTION 3.08. PROHIBITION OF OFFENSIVE ACTIVITIES.** No activity, whether for profit or not, shall be carried 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 neighborhood. This restriction is waived in regard to the normal sales activities required to sell homes in the Subdivision and the lighting effects utilized to display the model homes. No exterior speaker, horn, whistle, bell or other sound device, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot. The Board of Directors of the Association (sometimes herein referred to as the "Board") shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance. Activities expressly prohibited, without limitation, include (1) the performance of work on automobiles or other vehicles in driveways or streets abutting Lots, (2) the use or discharge of firearms, firecrackers or other fireworks within the Property, (3) the storage of flammable liquids in excess of five gallons, or (4) other activities which may be offensive by reason of odor, fumes, dust, smoke, noise, vision, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion.

**SECTION 3.09. USE OF TEMPORARY STRUCTURES.** No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Lot any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant or builders as permitted by Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Property as in its sole discretion may be necessary or convenient while selling Lots, selling or constructing residences and constructing other improvements upon the Property. Such facilities may include, but not necessarily be limited to sales and construction offices, storage areas, model units, signs, and portable toilet facilities. Declarant's successors and assigns may exercise the right reserved in this Section 3.09.

**SECTION 3.10. STORAGE OF VEHICLES OR EQUIPMENT.** No motor vehicle or non-motorized vehicle, boat, trailer, camper, marine craft, hovercraft, aircraft, machinery or equipment of any kind may be parked or stored on any part of any Lot, easement, right-of-way, or Common Area unless such vehicle or object is completely concealed from public view inside a garage or other approved enclosure. Passenger automobiles, passenger vans, motorcycles, or pickup trucks that are in operating condition, having current license plates and inspection stickers, and that are in daily use as motor vehicles on the streets and highways of the State of Texas are exempt. No vehicle shall be parked on a yard or in a manner that obstructs or blocks a public sidewalk. No vehicle may be repaired on a Lot where such vehicle is not concealed inside a garage or other approved enclosure.

This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, repair or maintenance of a house or houses in the immediate vicinity.

SECTION 3.11. MINERAL OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or on any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or on any Lot. 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.

SECTION 3.12. ANIMAL HUSBANDRY. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets may be kept provided that they are not kept, bred or maintained for commercial purposes. No more than (2) of each type animal shall be kept as household pets. No resident of any Lot shall permit any dog, cat or other domestic pet under his ownership or control to leave such resident's Lot unless leashed and accompanied by a member of such resident's household.

SECTION 3.13. WALLS, FENCES AND HEDGES. No hedge in excess of three (3) feet in height, wall or fence shall be erected or maintained nearer to the front Lot line than the walls of the dwelling existing on such Lot. No side or rear fence, wall or hedge shall be more than six feet (6') high; provided, however, that the Architectural Control Committee may grant a variance in height up to a maximum of eight feet (8'). No chain-link, metal or wire fence will be permitted on any Lot. No fencing shall be constructed, placed or erected without strict compliance with Article IV of this Declaration. The Architectural Control Committee shall have sole authority relative to establishing standards for fence construction, including materials, height and location thereof.

SECTION 3.14. VISUAL OBSTRUCTION AT THE INTERSECTIONS OF PUBLIC STREETS. No planting or object which obstructs sight lines at elevations between two (2') feet and six (6') feet above the roadways within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five (25') feet from the intersection of the street property lines or extension thereof shall be placed, planted or permitted to remain on any corner Lots.

SECTION 3.15. LOT AND EXTERIOR MAINTENANCE. The Owners or occupants of all Lots shall at all times keep all weeds and grass thereof cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The drying of clothes in full public view is prohibited and the Owners or occupants of any Lots at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Lot is visible to full public view shall construct and maintain a drying yard or other suitable enclosure to screen the following from public view: the drying of clothes, yard equipment, wood piles or storage piles which are incident to the normal residential requirements of a typical family. No lot shall be used or maintained as a dumping ground for trash. Trash, garbage or other waste materials shall be kept in clean and sanitary containers awaiting

immediate garbage collection. No burning of trash or other debris is permitted on any Lot. New building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time of construction so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Without limiting the generality of the foregoing obligations for exterior maintenance, each Owner shall repair and maintain in good condition:

(a) The exterior paint on a residence and any other approved structures so that no portion thereof peels, scales or fades excessively and all painted portions remain neat and aesthetic in appearance;

(b) The windows on a residence and any other approved structures so that no caulking thereon is chipped or cracked and no window panes are broken;

(c) All awnings (if any are approved by the Architectural Control Committee, at its sole discretion) installed on a residence so that they are securely affixed to the exterior walls, gables, eaves or roof (as the case may be) and all holes or tears are immediately patched, stitched or otherwise repaired in a good, workmanlike and aesthetic manner;

(d) The exterior woodwork on a residence and any other approved structures, including all doors and windowsills, so that it remains intact, neat and aesthetic in appearance;

(e) The roof on a residence and any other approved structures so that all shingles are properly secured and no worn areas or holes are permitted to remain;

(f) The rain gutters and downspouts on a residence and any other approved structures so that all are properly painted or treated to prevent rust and corrosion, properly secured to roof, eaves, gables, or exterior walls (as the case may be) and maintained intact; and

(g) All fences or walls erected on a Lot so that all holes and cracks are repaired as they appear and no wooden portion thereof is permitted to decay beyond normal weathering.

In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them such default continuing after ten (10) days written notice thereof, the Association, may without liability to Owner or any occupants, in trespass or otherwise, but without being under any duty to do so, enter upon said Lot, 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 or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due and the Association may reflect such charges on an Owner's assessment account and may exercise all remedies in the collection thereof as set forth in Section 6.10 of this Declaration.

**SECTION 3.16. SIGNS, ADVERTISEMENTS AND BILLBOARDS.** Except for signs owned by Declarant or other Builders advertising their model homes during the period of original construction and home sales, no sign, advertisement or billboard, or advertising structure of any kind other than a normal "For Sale" sign not to exceed nine (9) square feet in total size may be erected or maintained on any Lot in said Subdivision. Declarant, the Association, or its assigns, will have the right to remove any sign advertisement or billboard

the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt thereof. The sum due shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such sums are due and the Association may reflect such charges on an Owner's assessment account and may exercise all remedies in the collection thereof as set forth in Section 6.10 of this Declaration.

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**SECTION 3.17. ANTENNAE AND FLAGPOLES.** No aerial television antenna, radio antenna, "HAM" radio antenna, "CB" radio antenna or other television antenna or accessories shall be erected or permitted to remain outside of a building on any Lot, except one (1) satellite dish antenna per Lot which must comply with the guidelines set forth hereinafter. No flagpole shall be permanently erected on any Lot unless prior written approval has been granted by the Architectural Control Committee. Satellite dish antennae shall be screened by a fence or other similar facility, to completely conceal them from view of any other Lot or public street and shall comply with the following guidelines:

1. Homeowner/resident shall, in advance, request Architectural Control Committee approval in writing and affix thereto all applicable plans and specifications.
2. Satellite dish antennae are to be installed only within fenced backyard areas of premises.
3. Satellite dish antennae shall be located at least five feet (5') from property fence lines.
4. Satellite dish antennae shall be no larger than ten feet (10') in diameter.
5. Satellite dish antennae shall not exceed two feet (2') above the six foot (6') fence line.
6. Satellite dish antennae shall be either black mesh or, painted black or dark brown if constructed of solid material, so as to be further obscured from neighbors' view.
7. Satellite dish antennae shall be completely screened from view on all sides facing adjacent Lots (or public streets applicable to corner Lots) with a four foot (4') by eight foot (8') lattice panel consisting of one inch (1") by two inch (2") treated lumber or red wood so that no portion of the satellite dish antenna, or any components thereof, is visible from eye level, which screening device must be approved in advance by the Architectural Control Committee.

**SECTION 3.18. 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 3.19. SOLAR COLLECTORS.** No solar collector shall be installed without the prior written approval of the Architectural Control Committee. Such installation shall be in harmony with the design of



untreated or unsanitary sewage being carried in the streets or into any body of water. No septic tank or other means of sewage disposal will be permitted.

SECTION 3.23. RESIDENCES AND IMPROVEMENTS DAMAGED BY FIRE OR OTHER CASUALTY.

Any buildings or other improvements within the Subdivision that are destroyed partially or totally by fire, storm, or any other casualty, shall be repaired or demolished within a reasonable period of time, and the Lot and improvements thereon, as applicable, restored to an orderly and attractive condition.

SECTION 3.24. COMMON AREA. Any Common Area shall be used only for streets, paths, recreational amenities, green belt areas or drainage purposes, and Lot purposes reasonably connected therewith or related thereto: provided, however, no residential, professional, commercial, educational or church use shall be made of any Common Area.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

SECTION 4.01. APPROVAL OF BUILDING PLANS. No building shall be erected, placed, or altered on any Lot until the construction plans and specifications and a plot plan showing the location of the structure, have been approved in writing by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board (the "Architectural Control Committee" or "Committee"). Approval by the Board or Architectural Control Committee, as applicable, shall be granted or withheld based on matters of compliance with the provisions of this Declaration, quality of material, harmony of external design with existing and proposed structures and location with respect topography and finished grade elevation. The Architectural Control Committee shall have full and complete authority to approve or disapprove the construction or alteration of any improvement on any Lot, and its judgment shall be final and conclusive. No member of the Committee or its designated representatives, as herein defined, shall be entitled to any compensation for services performed pursuant to this Section 4.01. The Committee may, however, employ one or more architects, engineers, attorneys or other consultants to assist the Committee in carrying out its duties hereunder, and the Association shall pay such consultants for such service as they render to the Committee.

SECTION 4.02. COMMITTEE MEMBERSHIP. The Architectural Control Committee members shall be three (3) in number and shall be appointed by the Board of Directors, who by majority vote may designate a representative to act for them. At any time, the then record owners of a majority of the Lots shall have the power through a duly recorded written instrument to change the membership of the Committee or to withdraw from the Committee or restore to it any of it, its powers and duties.

SECTION 4.02A. DECLARANT'S ARCHITECTURAL COMMITTEE - NEW CONSTRUCTION. The initial members of the Architectural Control Committee, specific to new construction as pertains to Article IV, Section 4.01 of the Declaration of Covenants and Restrictions of Summerfield shall be Clinton F. Wong, Alan F. Bauer and Phillip Peacock. Such committee shall at all times contain three (3) representatives of Pheasant

Creek, Ltd., its successors or assigns. Declarant's Architectural Control Committee has sole architectural control authority relative to new construction, up to and including the date of sale of a new residence.

Upon completion of new construction on one hundred percent (100%) of all Lots in Summerfield, Section One and all subsequent annexed sections of Summerfield the dissolution of the DECLARANT'S ARCHITECTURAL COMMITTEE shall be final and complete, with all of its authority completely transferred and/or assigned to the Association.

Declarant's duties, powers and responsibilities of the Architectural Control Committee shall automatically transfer and vest in the SUMMERFIELD HOMEOWNERS ASSOCIATION, INC. upon completion and sale of a residence on a Lot (i.e., on a Lot by Lot basis), with Declarant retaining Architectural Control Committee authority relative to all Lots prior to completion and sale of a residence thereon. Upon the sale of the first residence on a Lot, the Board of Directors of the Association may serve as the Architectural Control Committee (relative only to Lots after the completion of a residence thereon and sale thereof) or the Board, by majority vote, may appoint an Architectural Control Committee to assist in performing the functions called for in this Article IV as referenced hereinabove. Accordingly, it is anticipated that two (2) separate Architectural Control Committees (i.e., the Declarant's and the Association's, respectively) will be functioning simultaneously pursuant to their separate and distinct authority which is specifically delineated hereinabove.

**SECTION 4.03. REPLACEMENT.** In the event of death or resignation of any member or members of the Association's Architectural Control Committee or Declarant's Architectural Control Committee, as the case may be, the remaining member or members shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications and plot plans submitted or to designate a representative with like authority.

**SECTION 4.04. MINIMUM CONSTRUCTION STANDARD.** Either of the two (2) Architectural Control Committees referenced hereinabove may from time to time promulgate an outline of minimum acceptable construction standards; provided, however, that such outline will serve as a minimum guideline and such Architectural Control Committee shall not be bound thereby. If as a result of inspections or otherwise, the Architectural Control Committee finds that any residential construction has been done contrary to approved plans and specifications, the Architectural Control Committee shall act reasonably and diligently in notifying owner or builder of the particulars of the noncompliance and must recommend action to be taken to cure such deficiencies as further stated in Section 4.08 (Noncompliance). For purposes of clarification, the term "Architectural Control Committee" as used in the remainder of this Article IV shall refer to the Association's Architectural Control Committee or Declarant's Architectural Control Committee, interchangeably as the case may be.

**SECTION 4.05. INSPECTION.** In order to control the quality of construction and to reasonably insure that all residential construction (including the construction of the residence and all other improvements on the Lot) are constructed in accordance with (a) the Plat or any replat, (b) this Declaration, (c) Fort Bend County regulations, (d) minimum acceptable construction standards as promulgated from time to time by the Architectural Control Committee, and (e) Architectural Control Committee regulations and requirements, the Architectural Control Committee or its representatives may conduct certain building inspections of the improvements being constructed by the Builders and/or Owners, in accordance with inspection procedures established from time to time by the Architectural Control Committee. A fee in an amount to be determined by the Architectural Control Committee must be paid to the Architectural Control Committee prior to architectural approval, or at such other time as designated by the Architectural Control Committee, to defray the expense of such building inspections, and the use of architects, engineers, attorneys or other consultants to assist the Committee.

**SECTION 4.06. EFFECT OF APPROVAL BY COMMITTEE.** 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 Plat; 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 Plat or in the event that such building and/or improvements are constructed in accordance with such plans and specifications and Plat, 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 4.07. VARIANCES.** The Architectural Control Committee 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 Architectural Control Committee, when circumstances such as topography natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Architectural Control 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 Lot and the Plat.

**SECTION 4.08. NONCOMPLIANCE.** If, as a result of inspections or otherwise, the Architectural Control Committee finds that any residential construction has been done without obtaining the approval of the Architectural Control Committee or was not done in conformity with the approved plans and specifications and Plat, the Architectural Control Committee shall notify the Owner in writing of the noncompliance. The Notice of Noncompliance shall specify the particulars of the non-compliance and shall require the Owner to take such action as may be necessary to remedy the noncompliance. If, for any reason other than the Owner's act or neglect, the Architectural Control Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt by the Architectural Control Committee of the Notice of Completion, the improvements constructed by such Owner on the Lot shall be deemed in compliance if such improvements were, in fact, completed as of the date of Notice of Completion. If, however, the Architectural Control Committee issues a Notice of Noncompliance, the Owner shall cure the noncompliance within a period of not more than forty-five (45) days from the date the Notice of Noncompliance is mailed to the Owner of such Notice of Noncompliance. If the Owner does not cure the noncompliance within forty-five (45) days after the date the Notice of Noncompliance is sent to the Owner or commence to cure such noncompliance in the case of a noncompliance which cannot reasonably be expected to be cured within forty-five (45) days (provided that such Owner diligently continues the curing of such noncompliance) the Association's Board of Directors may, at its option, record a Notice of Noncompliance against the Property on which the noncompliance exists, or may otherwise cure such noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred therewith, which reimbursement obligation shall be secured in the same manner as the payment of assessments (described in Article VI of this Declaration). The right of the Association's Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board of Directors may have at law, in equity, or under this Declaration to cure such noncompliance.

**SECTION 4.09. NO IMPLIED WAIVER OR ESTOPPEL.** No action or failure to act by the Architectural Control Committee or by the Association's Board of Directors shall constitute a waiver or estoppel with respect to future action by the Architectural Control Committee or Board of Directors with respect to the construction of any improvements within the Subdivision. Specifically, the approval by the Architectural Control Committee or by the Board of Directors of any such residential construction shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar residential construction or any similar proposals, plans, specifications or other material submitted with respect to any other residential construction by such person or otherwise.

**SECTION 4.10. DISCLAIMER.** No approval of plans and specifications and no publication or designation of architectural standards shall ever be construed as representing or implying that such plans, specifications or standards will result in a properly designed structure or satisfy any legal requirements.

## ARTICLE V

## SUMMERFIELD HOMEOWNERS ASSOCIATION, INC.

**SECTION 5.01. MEMBERSHIP.** Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, 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. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Any mortgagee or lienholder who acquired title to any Lot which is a part of the Property, through judicial or nonjudicial foreclosure, shall be a member of the Association.

**SECTION 5.02. CLASSES OF MEMBERSHIP.** The Association shall have two (2) classes of voting membership.

**Class A.** Class A Members shall be all those Owners as defined in Section 5.1, with exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership as referenced in Section 5.1. When more than one person holds interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** The Class B Member shall be Declarant, its successors and assigns. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership as referenced in Section 5.1; provided, however, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or
- (b) January 1, 2004.

**SECTION 5.03. NON-PROFIT CORPORATION.** SUMMERFIELD HOMEOWNERS ASSOCIATION, INC., a non-profit corporation, has been or will be organized and it shall be governed by the Articles of Incorporation ("Articles") of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

**SECTION 5.04. BYLAWS.** The Association may adopt whatever rules ("Rules and Regulations") or Bylaws it may choose to govern the organization; provided, however, that same are not in conflict with the terms and provisions hereof.

**SECTION 5.05. INSPECTION OF 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.

**SECTION 5.06. MEMBERS' RIGHT OF ENJOYMENT.** Every member shall have a beneficial interest of use and enjoyment in and to the Common Area 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 use of the Common Area, 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 recreational facility situated upon the Common Area;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the homeowners hereunder;

(d) the right of the Association to suspend the voting rights and right to use of the Common Area by a member for any period during which any assessment against his Lot remains unpaid; and the right to suspend the voting rights and right to use of the Common Area by a member for a period not to exceed sixty (60) days for any infraction of the Rules and Regulations relating to the use of the Common Area; and

(e) the right of the Association 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 conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership and such instrument has been recorded.

SECTION 5.07. 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, his tenants, or contract purchasers who reside on the Property.

SECTION 5.08. RENTAL AND LEASING. Owners must notify the Association if their Lots are leased. The Association needs to know the name of the tenant and also the correct mailing address of the Owner of the Property. In no event, however, shall any leasing be allowed except pursuant to written agreement or form approved by the Board of Directors that affirmatively obligates all tenants and other residents of the Lot to abide by the Declaration, Bylaws, and Rules and Regulations of the Association.

#### ARTICLE VI

##### MAINTENANCE ASSESSMENTS

SECTION 6.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest and late charges thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the property against which each such assessment is made. In order to secure the payment of the assessments hereby levied, a vendor's lien for the benefit of the Association, shall be and is hereby reserved in the Deed from the Declarant to the purchaser of each lot or portion thereof, which lien shall be enforceable through

appropriate judicial or non-judicial proceedings by the Association. As additional security for the payment of the assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants the Association a lien on such Lot which may be foreclosed on by non-judicial foreclosure pursuant to the provisions of Section 51.002 of the Texas Property Code; 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 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 Fort Bend County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 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 pre-paid, registered or certified, return receipt requested, properly addressed to such Owner at the last known address of such Owner according to the records of the Association. Out of the proceeds of such sale, 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 addition to foreclosing the lien hereby retained, in the event of nonpayment by any Owner of such Owner's portion of any assessment, the Association may, acting through its Board of Directors, upon ten (10) days prior written notice thereof to such nonpaying Owner, in addition to all other rights and remedies available at law or otherwise, restrict the rights of such nonpaying Owner to use the Common Areas, if any, and Recreational Facilities in such manner as the Association deems fit or appropriate and/or suspend the voting rights of such nonpaying Owner so long as such default exists.

It is the intent of the provisions of this Section 6.01 to comply with the provisions of said Section 51.002 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 Fort Bend County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

SECTION 6.02. NOTICE OF LIEN. In addition to the right of the Board of Directors to enforce assessments, the Board of Directors may file a claim or lien against the Lot of the delinquent Owner or member by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest, late charges and costs of collection which have accrued thereon, (c) the legal description and street address of the Lot against which a lien is claimed and (d) the name of the Owner thereof, thereby evidencing the Owner's non-payment of the assessments or charges provided for herein. 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 amount 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 6.03. LIENS SUBORDINATE TO MORTGAGES. The liens described in Section 6.01 hereof 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 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 mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid assessments or charges against such Lot which accrued prior to the time such holder acquires title to such Lot. No such sale or transfer shall relieve such holder acquiring title to a Lot from liability for any 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 assessments. The Association shall use its best efforts to give each such mortgagee 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 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 Section 6.01 hereof.

SECTION 6.04. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Property and in particular for any improvement or services in furtherance of these purposes and maintenance of the Common Area. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes, insurance, repairs, replacement and maintenance of the Common Area as may from



time to time be authorized by the Board of Directors, and other facilities, services and activities as may from time to time be authorized by the Board of Directors, including, but not limited to, mowing grass, caring for the grounds, installation and maintenance of a sprinkler system, security services, insect control, landscaping, operation and maintenance of a swimming pool, tennis courts, recreational building and equipment, trash pickup, payment of all legal and other expenses incurred in connection with the enforcement of this Declaration and Rules and Regulations, payment of all reasonable and necessary expenses in connection with the collection and administration of assessments, and other charges required by this Declaration or that the Board of Directors of the Association shall determine to be necessary to meet the primary purpose of the Association. The use of the annual assessments 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 6.05. BASIS AND MAXIMUM OF ANNUAL ASSESSMENT.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Sixty-Four and No/100 Dollars (\$264.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by ten percent (10%) of the maximum annual assessment for the previous year, which increase may be cumulative.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the amount established by the formula described in (a) above by the affirmative votes of two-thirds (2/3) of the aggregate of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, at which a quorum is established, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments resulting from a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment.

**SECTION 6.06. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENT.** In addition to the annual assessment authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the aggregate of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the

meeting setting forth the purpose of the meeting. Any such special assessments shall be payable (and the payment thereof may be enforced) in the manner herein specified for the payment and enforcement of the annual assessments, with the due dates for such special assessments being established by the Board of Directors.

SECTION 6.07. UNIFORM RATE OF ASSESSMENT. Annual and special assessments shall be fixed at a uniform rate as follows:

(a) Owners, as defined herein, shall pay one hundred percent (100%) for both annual and special assessments; and

(b) The Declarant, and its successors as defined herein, shall pay fifty percent (50%) of both annual and special assessments attributable to their unimproved Lots; and

(c) Builders shall pay fifty percent (50%) of both annual and special assessments attributable to their Lots.

SECTION 6.08. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 6.05 AND 6.06. At the first meeting called, as provided in Sections 6.05 and 6.06 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, without notice other than announcement at the meeting, and the presence at the meeting of members or of proxies entitled to cast thirty percent (30%) of all of the votes of each class of membership shall constitute a quorum at any such subsequent meeting which may be held at any time not more than sixty (60) days following the preceding meeting.

SECTION 6.09. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. DUE DATES. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and pre-paid to January 1 of the following year. This pre-payment is due at the time title is transferred to the Owner or Builder. From that point on, annual assessments shall be due and payable in advance on January 1 of each succeeding year. The Board of Directors shall fix the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; however, the failure by the Board of Directors to fix an annual assessment for any year shall not be deemed a waiver with respect to any of the provisions of this Declaration or release of the liability of any member to pay assessments, or any installment thereof, for that or any subsequent year. In the event of such failure, each Owner shall continue to pay the annual assessments established for the previous year until the new annual assessment is established. The new annual assessment established by the Board of Directors shall be applied retroactively to the commencement of the then current assessment year and the deficit shall be paid within thirty (30) days after receipt of a statement therefor. Written notice of the annual assessment shall be sent to every Owner subject thereto.

SECTION 6.10. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of ten percent (10%) per annum, the Association may impose a reasonable late charge for late payments of assessments and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Property. Interest, late charges, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including nonjudicial foreclosure, as described in Section 6.01 hereof. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 6.11. EXEMPT PROPERTY. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area, including all Reserves shown on the Plat; and (c) all properties owned by 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 assessments.

#### ARTICLE VII

##### ANNEXATION OF ADDITIONAL PROPERTY

Additional land contiguous to, or in the proximity of, SUMMERFIELD, SECTION ONE (1) (whether owned by Declarant or otherwise) may be annexed by the Declarant (a) at Declarant's sole discretion and without the consent of members within ten (10) years of the date of this instrument provided that (i) a plat of the property to be annexed, containing the residential lots is processed and duly recorded in the Plat Records of Fort Bend County, Texas, (ii) a separate set of deed restrictions covering said platted lots is approved by HUD (FHA/VA) and (iii) the additional land contiguous to or in the proximity of SUMMERFIELD, SECTION ONE is a part of a general plan submitted to and approved by FHA/VA or (b) with the consent of two-thirds (2/3) of a quorum of each Class of the members of the Association at a duly called meeting of the Association's membership. Any additions (annexations) authorized under this and succeeding subsections, shall be made by filing of record a Declaration of Covenants, Conditions and Restrictions and Annexation Agreement (which Declaration and Annexation Agreement need not be approved by the Association in the event of an annexation pursuant to sub-paragraph (a) hereinabove) with respect to the additional properties which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such property. Such Declaration must impose annual maintenance charges and assessments on the property covered thereby, on a uniform, per lot basis, substantially equivalent to the maintenance

charges and assessments imposed by this Declaration. Although it is anticipated that future sections will be annexed, Declarant is under no obligation to do so.

#### ARTICLE VIII

##### INSURANCE AND CASUALTY LOSSES

**SECTION 8.01. INSURANCE.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the Common Area in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Area, the Association, and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and may, at the discretion of the Board of Directors, obtain directors' and officers' liability insurance. Premiums for all insurance on the Common Area shall be at the expense of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

**SECTION 8.02. DISBURSEMENT OF PROCEEDS.** Proceeds of insurance policies shall be disbursed as follows: If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, or in the event no repair or reconstruction is made after making such settlement, shall be retained by and for the benefit of the Association.

**SECTION 8.03. DAMAGE AND DESTRUCTION.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section 8.03, means repairing or restoring the damaged or destroyed property to substantially the same condition in which it existed prior to the fire or other casualty.

**SECTION 8.04. REPAIR AND RECONSTRUCTION.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

## ARTICLE IX

## GAS AND ELECTRICAL SERVICE

SECTION 9.01. GAS SERVICE. Entex, Inc. has agreed to provide natural gas service to all Lots in the Subdivision, provided certain minimum usage is made of the service. Pursuant to the contract providing such service, all homes shall have a minimum of gas water heating, and gas central comfort heating, or pay a non-utilization fee. If, however, any home completed in the Subdivision does not utilize both gas water heating and gas central comfort heating appliances, then the Owner of such home at the time of constructing such improvements shall pay to Entex, Inc. the non-utilization of gas facilities charge set by Entex, Inc. for such home. This non-utilization charge shall be due thirty (30) days from completion of such home. In the event this non-utilizing charge is not timely paid by the Owner of the non-utilizing home, after demand is made for such payment, the Declarant or the Association may, at their option, pay such charge and the payment so made, if any, shall be secured by the lien described in Article VI hereof.

SECTION 9.02. ELECTRICAL SERVICE. An electric distribution system will be installed in the Subdivision. The Owner of each Lot in the Subdivision shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the Owner's home to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed the underground electric distribution system in the Subdivision at no cost to the Declarant (except for certain conduits, where applicable) upon the Declarant's representation that the Subdivision is being developed for single-family dwellings and/or patio homes of the usual and customary type, constructed upon the Property, designed to be permanently located upon the Lot where originally constructed and built for sale to bona fide purchaser (such category of dwellings and/or patio homes expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Owners in the Subdivision be changed so that dwellings of a different type will be permitted in such Subdivision, the electric company shall not be obligated to provide electric service to a Lot where a dwelling of a different type is located unless (a) the Declarant has paid to the electric company an amount

representing the excess in cost for the entire Subdivision, of the underground distribution system over the cost of equivalent overhead facilities to service such Subdivision (the Declarant having no obligation to pay such cost and any contribution made by Declarant being subject to a right of reimbursement from the Owners), or (b) the Owner of such Lot, or the applicant for service, shall pay to the electric company the sum of (1) \$2.50 per front Lot foot, it having been agreed that such amount reasonably represents the excess in cost of equivalent overhead facilities to serve such lot, plus (2) the cost of rearranging and adding any electric facilities serving such Lot, which rearrangement and/or addition is determined by the electric company to be necessary.

## ARTICLE X

### GENERAL PROVISIONS

**SECTION 10.01. TERM.** The provisions hereof shall run with the Property and shall be binding upon all parties 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 a majority of the then Owners of the Lots has been recorded agreeing to change or terminate said Declaration in whole or in part.

**SECTION 10.02. AMENDMENTS.** This Declaration may be amended or terminated at any time by the written agreement, or signed ballot, of those members entitled to cast not less than sixty percent (60%) of the aggregate of the votes of both classes of membership of the Association, as defined in Article V hereof, with members of both classes having one (1) vote for each Lot owned. Members may vote, in person or by proxy, at a meeting duly called for such purpose, written notice of which shall be given to all members at least thirty (30) days and not more than sixty (60) days in advance and shall set forth the purpose of such meeting, provided that the Declarant must consent thereto if such amendment or termination is to be effective. Any such amendment or termination shall become effective when an instrument is filed for record in the Real Property Records of Fort Bend County, Texas, accompanied by a certificate, signed by a majority of the Board of Directors, stating that the required number of members cast a written vote, in person or by proxy, in favor of said amendment or termination at the meeting called for such purpose. Such instrument and certification shall also be signed by the Declarant if the amendment or termination is to be effective. Copies of the written ballots pertaining hereto shall be retained by the Association for a period of not less than five (5) years after the date of filing of the amendment or termination.

**SECTION 10.03. AMENDMENTS BY THE DECLARANT.** The Declarant shall have and reserves the right at any time and from time to time prior to January 1, 1999, without joinder or consent of any 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 affect the vested property or other rights of any Owner or his mortgagee.

**SECTION 10.04. ENFORCEMENT.** In addition to the remedies for enforcement provided for elsewhere in this Declaration, the violation or attempted violation of the provisions of the governing documents or the Rules and Regulations by an Owner, his family, guests, lessees or licensees shall authorize the Association's Board of Directors to avail itself of any one or more of the following remedies:

- (a) The imposition of a special charge not to exceed Fifty (\$50.00) Dollars per violation, or
- (b) The suspension of Owner's rights to use any Association property for a period not to exceed thirty (30) days per violation, or
- (c) The right to cure or abate such violation and to charge the expense thereof, if any, to such Owner, or
- (d) The right to seek injunctive or any other relief provided or allowed by law against such violation and to recover from such Owner all its expenses and costs in connection therewith, including, but not limited to attorneys' fees and court costs.

Before the Board may invoke the remedies provided above, it shall give registered notice of such alleged violation to Owner, and shall afford the Owner a hearing before the Board, should the Owner request such a hearing. If a violation is found to exist after the hearing (if one is requested by Owner) or after a reasonable period of time referenced in the Notice, the Board's right to proceed with the listed remedies shall become absolute. The reasonableness of the time allowed to correct the violation is within the sole discretion of the Association's Board of Directors. Each day a violation continues shall be deemed a separate violation. Failure of the Association 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.

In addition to the Association's right to enforce the provisions of this Declaration, this Declaration is enforceable by each Owner of a Lot in the subdivision, or any portion thereof (including Declarant), and their respective heirs, legal representatives, successors and assigns. In the event any action to enforce this Declaration is initiated against an Owner or occupant of a Lot by the Association or an Owner, the Association or Owner, as the case may be, shall be entitled to recover reasonable attorney's fees from the Owner or occupant of a Lot who violated this Declaration.

**SECTION 10.05. 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 thereof shall not affect the validity or enforceability of any other provision.

**SECTION 10.06. FHA/VA APPROVAL.** So long as the Declarant, its successors and assigns, are in control of the Association, the following actions will require the prior approval of the Federal Housing

Administration and/or the Veterans Administration; Annexation of additional property, dedication of Common Area, and amendment of this Declaration (except pursuant to Section 10.03 hereof.)

SECTION 10.07. MERGERS AND CONSOLIDATIONS. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those members entitled to cast not less than two-thirds (2/3) of the aggregate of the votes of both classes of membership of the Association.

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 another association may, by operation of law, be added to the properties, rights and obligations to the Association as 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 with respect to the Subdivision, except as changed by amendment of this Declaration.

SECTION 10.08. LIBERAL INTERPRETATION. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

SECTION 10.09. SUCCESSORS AND ASSIGNS. The provisions hereof shall be binding upon and inure to the benefit of the Owners, the Declarant and the Association, and their respective heirs, executors, administrators, successors and assigns.

SECTION 10.10. UTILITY EASEMENTS. Declarant hereby covenants and agrees to grant, sell and convey to the Municipal Utility District or Districts within whose boundaries the Property is situated ("Utility Districts"), a non-exclusive underground utility easement for the installation, operation, maintenance, repair, removal and replacement of underground utility lines and all underground appurtenances thereto in and under streets on or abutting the Property; provided, however, if such installation, operation, maintenance, repair, removal and replacement of utility lines or appurtenances by said Utility Districts, their successors, assigns, agents, servants or contractors, and said underground utility easements should in any way damage the surface of the Property or interrupt or interfere with the construction or maintenance of improvements on the Property, said Utility Districts shall be obligated to repair such damage and/or reimburse the appropriate parties for construction or maintenance; further provided, that said Utility Districts shall have the right, from time to time, to partially block any public or private street on or abutting the Property in order to install, operate, maintain, repair, remove and replace such utility lines or underground appurtenances; and further provided, that (a) such right shall be exercised in a reasonable manner; (b) said Utility Districts shall



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never have the right to block at any time, more than one traffic lane of any street which from time to time may exist on or abutting the Property; and (c) except in a case where repairs must be performed on an emergency basis, said Utility Districts shall deliver to the Owner or Owners of the Property or that portion to be affected, not less than three (3) days written notice of said Utility Districts' intention to exercise such right and the anticipated period of time for which some portion of the Property will be affected.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 2 day of May, 1994.

PHEASANT CREEK, LTD., by its sole general partner, Greatmark International, Inc.

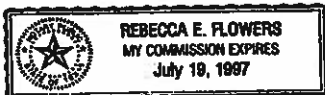
By: [Signature]  
Clinton F. Wong, President

ATTEST: [Signature]  
Phillip Peacock, Secretary

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Clinton F. Wong, President of Greatmark International, Inc., sole general partner of Pheasant Creek, Ltd., a Texas Limited Partnership, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 2 day of May, 1994.



[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

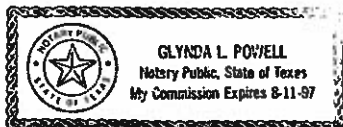
FEDERAL HOUSING ADMINISTRATION

By: [Signature]  
Typed Name: Allen J. Novosad  
Title: Director, Housing Management

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared [Signature] Novosad, Dir. Wong, Dev. of the Federal Housing Administration, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express and in the capacity therein stated.

GIVEN under my hand and seal of office, this 26 day of May, 1994.



[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

JOINDER OF LIENHOLDER

AS PER ORIGINAL

The undersigned, Southwest Bank of Texas, N. A., a federal banking institution, being the owner and holder of an existing mortgage and lien upon and against the real property described in the foregoing Declaration and defined as the "Property" in said Declaration, as such mortgagee and lienholder, does hereby consent to and join in this Declaration.

The consent and joinder shall not be construed or operate as a release of said mortgage or liens owned and held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against each and all of the Lots and all appurtenances thereto, and all of the undivided, equitable shares and interests in the Common Area and Recreational Facilities, subject to the restrictions hereby agreed to.

SIGNED by the undersigned officer of Southwest Bank of Texas, N.A., hereto authorized, this 2<sup>ND</sup> day of MAY, 1994.

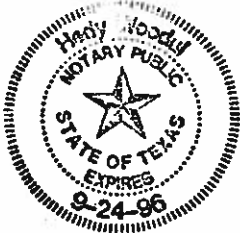
SOUTHWEST BANK OF TEXAS, N.A.

By: [Signature]  
Typed Name: GEORGE M. MARSHALL  
Title: VICE PRESIDENT

THE STATE OF TEXAS §  
§  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority on this day personally appeared George Marshall, Vice President of SOUTHWEST BANK OF TEXAS, N.A., a federal savings bank, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said federal savings bank.

GIVEN under my hand and seal of office, this 2 day of May, 1994.



[Signature]  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

U.S. Department of Veterans Affairs

AS PER ORIGINAL

By:

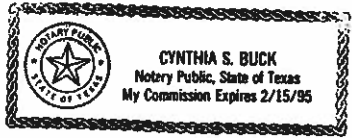
*[Handwritten signature]*

STATE OF TEXAS §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared John T. Page, Subdivision Approver of the U.S. Department of Veteran's Affairs, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein express, in the capacity therein stated and as the act and deed of said corporation.

GIVEN under my hand and seal of office, this 15 day of June, 1994.

Cynthia S. Buck  
Notary Public in and for  
The State of Texas



After Recording Return to:  
Pheasant Creek, Ltd.  
7676 Woodway, Suite 238  
Houston, Texas 77063

FILED

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*[Handwritten signature]*  
COUNTY CLERK  
FORT BEND COUNTY, TEXAS

STATE OF TEXAS COUNTY OF FORT BEND  
I, hereby certify that this instrument was filed on the  
date and time stamped hereon by me and was duly  
recorded in the volume and page of the Official Records  
of Fort Bend County Texas as stamped by me.

JUL 14 1994



*Aimee Nilson*  
County Clerk, Fort Bend Co., Tex.