

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Association, as may be provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Properties for any period during which any assessment against a Lot owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(f) The right of the Declarant or the Association, subject to approval by written consent by the Member(s) having a majority of the outstanding votes of the Members, in the aggregate, regardless of class, to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility company for such purposes and upon such conditions as may be agreed to by such Members;

(g) The right of the Declarant or the Association, at any time, to make such reasonable amendments to any Plat, as it deems advisable, in its sole discretion. All Members are advised that a portion of the Common Properties may be located within the platted and dedicated public rights-of-way and in connection therewith the public shall have rights of use and enjoyment of Common Properties located within the public rights-of-way; and

(h) With respect to any and all portions of the Common Properties, Declarant, until Declarant no longer owns record title to any portion of the Properties or the twentieth (20th) anniversary of the date this Declaration was recorded in the Office of the County Clerk of Denton County, Texas, whichever is the first to occur, shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the Town or any other governmental agency having appropriate jurisdiction over the Common Properties) to: (i) alter, improve, landscape and/or maintain the Common Properties; (ii) rechannel, realign, dam, bridge, bulwark, culvert and otherwise employ or utilize construction and/or engineering measures and activities of any kind or nature whatsoever upon or within the Common Properties; (iii) zone, rezone, or seek and obtain variances or permits of any kind or nature whatsoever upon or within the Common Properties; (iv) replat or redesign the shape or configuration of the Common Properties; and (v) seek and obtain any and all permits, licenses or exemptions from any and all governmental agencies exercising jurisdiction over the Common Properties and/or the uses or activities thereon.

ARTICLE V COVENANTS FOR ASSESSMENTS

5.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree (and such covenant and agreement

shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges (as specified in Section 5.04 hereof), such assessments to be fixed, established and collected from time to time as herein provided; (2) special assessments for capital improvements and other purposes (as specified in Section 5.05 hereof), such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against one or more Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of such Owner or Owners, his tenants (if applicable), and their respective family, agents, guests and invitees, and not caused by ordinary wear and tear (as specified in Section 5.05 hereof), all of such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance, special capital, and special individual assessments described in this Section 5.01 (hereinafter, the "Assessment" or the "Assessments"), together with interest thereon, attorneys' fees, court costs and other costs of collection thereof, as herein provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which any such Assessment is made. Each such Assessment, together with interest thereon, attorneys' fees, court costs, and other costs of collection thereof shall also be the continuing personal obligation of the Owner of such Lot at the time when the Assessment fell due. Further, no Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his Lot. Existing obligations of an Owner to pay Assessments and other costs and charges shall not pass to bona fide first lien mortgagees which become Owners by reason of foreclosure proceedings or an action at law subsequent to the date the Assessment was due; provided, however, any such foreclosure proceeding or action at law shall not relieve such new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent Assessment.

5.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for (i) the purpose of promoting the recreation, comfort, health, safety and welfare of the Members and/or the residents of the Properties; (ii) managing the Common Properties; (iii) enhancing the quality of life in the Properties and the value of the Properties; (iv) improving and maintaining the Common Properties, the properties, services, improvements and facilities devoted to or directly related to the use and enjoyment of the Common Properties, including, but not limited to, the payment of taxes on the Common Properties and insurance in connection therewith and the repair, replacement and additions thereto; (v) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; (vi) carrying out the powers and duties of the Board of Directors of the Association as set forth in this Declaration and the Bylaws; (vii) carrying out the purposes of the Association as stated in its Articles of Incorporation; and (viii) carrying out the powers and duties relating to the Architectural Control Committee, after Declarant has delegated or assigned such powers and duties to the Association.

5.03 Improvement and Maintenance of the Common Properties Prior to Conveyance to the Association. Initially, all improvement of the Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. After the initial improvements to the Common Properties are substantially completed and until the date of the conveyance of the title to the Common Properties to the Association, the Declarant, on behalf of the Association, shall have the responsibility and duty (but with right of Assessment against all Owners) of maintaining the Common Properties, including, but not limited to, the payment of

taxes on and insurance in connection with the Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties. In this regard, and until such time as the Common Properties are conveyed to the Association, all Assessments collected by the Association (less such amount required for the operation of the Association) shall be forthwith paid by the Association to Declarant, to the extent that such Assessments are required by Declarant to maintain the Common Properties as set forth in this Paragraph. The Association may rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to maintain the Common Properties hereunder.

5.04 Annual Maintenance Assessments.

(a) Commencing with the year beginning January 1, 1995, and each year thereafter, each Member shall pay to the Association an annual maintenance assessment in such amount as set by the Board of Directors, at its annual meeting; provided, however, in no event shall any maintenance assessment be due for the period of time prior to July 1, 1995.

(b) Subject to the provisions of Section 5.04(c) hereof, the rate of annual maintenance assessments may be increased by the Board. The Board may, after consideration of current maintenance, operational and other costs and the future needs of the Association, fix the annual maintenance assessments for any year at a lesser amount than that of the previous year.

(c) An increase in the rate of the annual maintenance assessments as authorized by Section 5.04(b) hereof in excess of twenty-five percent (25%) of the preceding year's annual maintenance assessments must be approved by the Members in accordance with Section 3.03 hereof.

(d) When the annual maintenance assessment is computed for Lots, all or a portion of such annual maintenance assessment shall be payable to the Association by the Member according to the status of the Lot owned by such Member as follows:

(i) As to a Lot owned by a Class A Member, the full annual maintenance assessment shall be payable.

(ii) As to a Lot owned by a Class B Member, twenty-five percent (25%) of the annual maintenance assessment shall be payable.

(e) Notwithstanding anything herein contained to the contrary, prior to January 1, 1996, the maximum annual maintenance assessment chargeable against any Lot for which a full assessment is payable shall not exceed \$40.00 per month; provided, however, until such time as the initial phase of a recreation center and park facilities ("Facilities") has been installed on the property described on Exhibit "D" attached hereto and made a part hereof for all purposes, the maximum annual assessment for any period prior to January 1, 1996, shall not exceed \$20.00 per month and until such time as the second phase of the

Facilities has been installed the maximum annual assessment for any period prior to January 1, 1996, shall not exceed \$30.00 per month. It is contemplated that the first phase of the Facilities shall contain a junior olympic size swimming pool, "cabana" building, two (2) tennis courts, parking and various playground facilities, however, Declarant shall have the sole discretion as to the contents of the initial phase of the Facilities and the time such phase shall be developed.

(f) The Board of Directors may provide that annual maintenance assessments shall be paid monthly, quarter-annually, semi-annually or annually on a calendar year basis. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall (i) estimate the total common expenses to be incurred by the Association for the forthcoming fiscal year, (ii) determine, in a manner consistent with the terms and provisions of this Declaration, the amount of the annual maintenance assessments to be paid by each Member, and (iii) establish the date of commencement of the annual maintenance assessments. Written notice of the annual maintenance assessments to be paid by each Member and the date of commencement thereof shall be sent to every Member, but only to one (1) joint Owner. Each Member shall thereafter pay to the Association his annual maintenance assessment in such manner as determined by the Board of Directors.

(g) The annual maintenance assessments shall include reasonable amounts, as determined by the Members or by the Board, collected as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Properties. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Association. Assessments collected as reserves shall not be considered to be advance payments of regular annual maintenance assessments.

5.05 Special Capital Assessments and Special Individual Assessments.

(a) In addition to the annual maintenance assessments authorized in Section 5.04 hereof, the Board of Directors of the Association may levy in any calendar assessment year a special capital assessment for the purpose of (i) defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Properties or Common Properties, including the necessary fixtures and personal property related thereto (ii) maintaining portions of the Common Properties and improvements thereon, or (iii) carrying out other purposes of the Association; provided, however, that any such special capital assessment levied by the Association shall have the approval of the Members in accordance with Section 3.03 hereof. Any special capital assessment levied by the Association shall be paid by the Members directly to the Association on such date or dates as determined by the Board of Directors. All such amounts collected by the Association may only be used for the purposes set forth in this Section 5.05 and shall be deposited by the Board of Directors in a separate bank account to be held in trust for such purpose. These funds shall not be commingled with any other funds of the Association.

(b) The Board of Directors of the Association may levy special individual assessments against one or more Owners for (i) reimbursement to the

Association of the costs for repairs to the Properties or Common Properties and improvements thereto occasioned by the willful or negligent acts of such Owner or Owners and not ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against an Owner or Owners relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws of the Association or any rules or regulation promulgated hereunder. Any special individual assessment levied by the Association shall be paid by the Owner or Owners directly to the Association. All amounts collected by the Association as special individual assessments under this Section 5.05 shall belong to and remain with the Association.

5.06 Uniform Rate of Annual Maintenance Assessments and Special Capital Assessments. Both annual maintenance assessments and special capital assessments (excepting therefrom special individual assessments) must be fixed at a uniform rate for all Lots, and be payable as set forth herein.

5.07 Date of Commencement of Assessments; Due Dates; No Offsets. The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement and, except as hereinafter provided, shall be payable monthly, quarter-annually, semi-annually or annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.04 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the annual maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if to be paid in installments, of any special capital assessment or special individual assessment under Section 5.05 hereof shall be fixed in the respective resolution authorizing such assessment. Annual maintenance, special capital and special individual assessments may be established, collected and enforced by the Declarant at any time prior to the incorporation of the Association. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount shall be permitted for any reason.

5.08 Duties of the Board of Directors with Respect to Assessments.

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

(b) Written notice of all assessments shall be delivered or mailed to every Owner subject thereto. Such notice shall be sent to each Owner at the last address provided by each Owner, in writing, to the Association.

(c) The omission of the Board of Directors to fix the assessments within the time period set forth above for any year shall not be deemed a waiver

or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

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

5.09 Non-Payment of Assessment.

(a) Delinquency. Any Assessment, or installment thereof, which is not paid in full when due shall be delinquent on the day following the due date (herein, "delinquency date") as specified in the notice of such Assessment. The Association shall have the right to reject partial payment of an Assessment and demand full payment thereof. If any Assessment or part thereof is not paid within ten (10) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from and after the delinquency date until paid at a rate equal to the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum lawful rate.

(b) Lien. The unpaid amount of any Assessment not paid by the delinquency date shall, together with the interest thereon as provided in Section 5.09(a) hereof and the cost of collection thereof, including reasonable attorneys' fees, become a continuing lien and charge on the Lot of the non-paying Owner, which shall bind such Lot in the hands of the Owner, and his heirs, executors, administrators, devisees, personal representatives, successors and assigns. The lien shall be superior to all other liens and charges against the Lot, except only for tax liens and the lien of any bona fide first mortgage or first deed of trust now or hereafter placed upon such Lot. A subsequent sale or assignment of the Lot shall not relieve the Owner from liability for any Assessment made prior to the date of sale or assignment and thereafter becoming due nor from the lien of any such Assessment. The Board shall have the power to subordinate the lien securing the payment of any Assessment rendered by the Association to any other lien. Such power shall be entirely discretionary with the Board. As hereinbefore stated, the personal obligation of the Owner incurred at the time of such Assessment to pay such Assessment shall remain the personal obligation of such Owner and shall not pass to such Owner's successors in title unless expressly assumed by them in writing. Liens for unpaid Assessments shall not be affected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may exempt himself from liability for such Assessments or waive or otherwise escape liability for the Assessments by non-use of the Common Properties or abandonment of his lot.

To evidence any lien, the Association shall prepare a written notice of lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot covered by such lien and a description of the Lot covered by such lien. Such notice shall be executed by one of the officers of the Association and shall be recorded in the Office of the County Clerk of Denton County, Texas.

(c) Remedies. The lien securing the payment of the Assessments shall attach to the Lot belonging to such non-paying Owner with the priority set forth in this Section. Subsequent to the recording of a notice of the lien, the Association may institute an action at law against the Owner or Owners personally obligated to pay the Assessment and/or for the foreclosure of the aforesaid lien. In any foreclosure proceeding the Owner shall be required to pay the costs, expenses and reasonable attorneys' fees incurred by the Association. In the event an action at law is instituted against the Owner or Owners personally obligated to pay the Assessment there shall be added to the amount of any such Assessment:

- (i) the interest provided in this Section,
- (ii) the costs of preparing and filing the complaint in such action,
- (iii) the reasonable attorneys' fees incurred in connection with such action, and
- (iv) any other costs of collection;

and in the event a judgment is obtained, such judgment shall include interest on the Assessment as provided in this Section and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents or trustees 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 liens by all methods available for the enforcement of such liens, including non-judicial foreclosure pursuant to Section 51.002 of the Texas Property Code, and such Owner hereby expressly grants to the Association the private power of sale in connection with said liens. The Association may also suspend the Association membership and voting rights of any Owner who is in default in payment of any Assessment in accordance with this Declaration and/or the Bylaws.

(d) Notice to Mortgagees. The Association may, and upon the written request of any mortgagee holding a prior lien on any part of the Properties, shall report to said mortgagee any Assessments remaining unpaid for longer than thirty (30) days after the delinquency date of such Assessment.

5.10 Subordination of the Lien to Mortgages. The lien securing the payment of the Assessments shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust now or hereafter recorded against any Lot; provided, however, that such

subordination shall apply only to the Assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve the new Owner of such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien securing the payment of any subsequent assessment.

5.11 Exempt Property.

The following property subject to this Declaration shall be exempted from the assessments, charges and liens created in Section 5.04 and Section 5.05(a) hereof:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Properties.

5.12 Estoppel Information from Board with Respect to Assessments. The Board shall upon demand at any time furnish to any Owner liable for an Assessment, a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors of the Association for the issuance of such certificates.

5.13 Rights of Town of Flower Mound. Unless otherwise approved by seventy-five percent (75%) of the outstanding votes of all Members of the Association, regardless of class, the Association shall not by act or omission seek to abandon its obligations as established by this Declaration. However, the Town shall have the right, but not the obligation, to assume the duty of performing the maintenance obligations of the Association in the event that:

(a) The Association dissolves and the Common Properties shall not be either (i) dedicated to and accepted by the Town or other appropriate public agency, authority, or utility to be devoted to purposes as nearly as practicable as those to which such Common Properties were required to be devoted by the Association, or (ii) conveyed to another association or entity which assumes all of the Association's obligations imposed hereunder to maintain the Common Properties, upon the Town giving written notice to the Owners, within 180 days after such dissolution; or

(b) The Association, its successor or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder, upon the Town giving the Association, its successor or assign, written notice specifying in detail the nature and extent of the failure to maintain the Common Properties, and the Association failing to cure such deficiencies within thirty (30) days after receipt of such written notice.

Upon assuming such maintenance obligations, the Town may collect, when the same become due, all assessments, annual or special, levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining, or caring for the

Common Properties; and, if necessary, enforce the payment of delinquent assessments in the manner set forth herein. In the alternative, upon assuming such maintenance obligations, the Town may levy an assessment upon each Lot on a pro rata basis for the costs of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During any period that the Town assumes the obligations to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the Town to maintain the Common Properties shall cease and terminate when the Association, its successors and assigns, shall present to the Town reasonable evidence of its willingness and ability to resume maintenance of the Common Properties. In the event the Town assumes the duty of performing the maintenance obligations of the Association as provided herein, the Town, its agents, representatives and employees shall have the right of access, ingress and egress to and over the Common Properties for the purposes of maintaining, improving, and preserving the same, and in no event, and under no circumstances, shall the Town be liable to the Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or omissions (excluding, however, malfeasance and gross negligence) relating in any manner to maintaining, improving, and preserving the Common Properties.