

**DECLARATION OF COVENANTS AND RESTRICTIONS**  
**BEVERLY OAKS TOWNHOMES**  
(Amended 1991)

THIS DECLARATION, made on the 1st day of June, 1982 by NEW MAC, INC, (“Developer”); amended on the 4<sup>th</sup> day of February, 1983 by Patterson, Wadley, et. al., owners; and amended on the 1<sup>st</sup> day of January 1991 by owners Gianuzzi, Brown, Bauer et.al.

Witnesseth:

WHEREAS, Developer is the owner of the real property described in [Article II](#) of this Declaration and desires to create thereon a residential community with open spaces and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces and other common facilities; and, to this end, desires to subject the real property described in [Article II](#) to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Texas, as a non-profit corporation, BEVERLY OAKS TOWNHOMES ASSOCIATION, INC., for the purpose of exercising these functions;

NOW THEREFORE, the Developer declares that the real property described in [Article II](#), is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as “covenants and restrictions”) hereinafter set forth.

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) **“Association”** shall mean and refer to the BEVERLY OAKS TOWNHOMES ASSOCIATION, INC.
- (b) **“The Properties”** shall mean and refer to all such existing properties, as are subject to this Declaration or any Supplemental Declaration under the provisions of [Article II](#) hereof.
- (c) **“Common Properties”** shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties, including, but not limited to, the streets and parking easement areas.

- (d) **“Lot”** shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.
- (e) **“Living Unit”** shall mean and refer to any portion of a building situated upon The Properties designed and intended for use and occupancy as a residence by a single family, including and the Lot there under.
- (f) **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit situated upon The Properties but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (g) **“Member”** shall mean and refer to all those Owners who are members of the association as provided in [Article III](#), [Section 1](#), hereof.
- (h) **“Eligible Mortgage Holder”** shall mean a holder of a first mortgage on a Living Unit who has requested notice of certain matters from the Association pursuant to [Article VI](#) below.
- (i) **“Eligible Insurer or Guarantor”** shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters pursuant to [Article VI](#) below.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DELCATATION:**  
**ADDITIONS THERETO**

***Section 1: Existing Property***

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Irving, Dallas County, Texas, and is more particularly described in Exhibit A attached hereto and incorporated herein for all purposes, all of which real property shall hereinafter be referred to as “Existing Property”.

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

***Section 1: Membership.***

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot or Living Unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

***Section 2: Voting Rights***

The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all those owners as defined in [Section 1](#) with the exception of the Developer. Class A members shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership by [Section 1](#). When more than one person holds such interest or interests in any Lot or Living Unit all such persons shall be members, and the vote for such

Lot of Living Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Living Unit.

CLASS B. Class B members shall be the Developer. The Class B member shall be entitled to three votes for each Lot in which it holds the interest required for membership by [Section 1](#), provided that the Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier;

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on June 1, 1983.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Lot of Living Unit in which it holds the interests required for membership under [Section 1](#).

For purposes of determining the votes allowed under this [Section](#), when Living Units are counted, the Lot or Lots upon which each Living Units are situated shall not be counted.

### **Section 3: Voting**

A member shall be deemed in good standing and entitled to vote at any annual or special meeting of the members, within the meaning of this Declaration or the Bylaws, if, and only if, he shall have fully paid all assessments or installments thereof made or levied against him and the Living Unit owned by him.

## **ARTICLE IV PROPERTY RIGHTS IN THE COMMON PROPERTIES AND LOTS OR LIVING UNITS**

### **Section 1: Members Easements of Enjoyment**

Subject to the provisions of [Section 3](#), every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot or Living Unit.

### **Section 2: Title to Common Properties**

The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provisions herein, the Developer hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties to the Association, free and clear of all liens and encumbrances, not later than, the earliest to occur of the following:

- (a) 120 days after 75% of the Lots and Living Units constituting the Existing Property have been conveyed to Owners: or
- (b) Three years following conveyance of the first Living Unit if at the end of such period no additions have been added to the Existing Property.

### **Section 3: Extent of Members Easements.**

The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Developer and of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties. In the event of a default upon any such mortgage the lender's rights hereunder shall be limited to a right, after taking possession of such properties, to charge admission and other fees as a condition to continued enjoyment by the members and, if necessary, to open the enjoyment of such properties to a wider public until the mortgage debt is satisfied whereupon the possession of such properties shall be returned to the Association and all rights of the Members hereunder shall be fully restored; and
- (b) the right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosure; and
- (c) the right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations; and
- (d) the right of the Association to charge reasonable admission and other fees for the use of the Common Properties; and
- (e) the right of from time to time of individual Members or other designated persons to the use of parking spaces as may be regulated pursuant to [Section 4](#) hereof; and
- (f) the right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association.
- (g) the right of the Association to reasonable entry upon any Lot or Living Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Properties.
- (h) the right of the Association to grant permits, licenses and easements over the Common Properties for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties.

#### **Section 4: Parking Rights**

The Association shall maintain upon the Common Properties and upon the various parking easements throughout The Properties, parking spaces for use of the Members, their families and guests. The Association shall designate from time to time the particular use or uses that may be made of such parking spaces and the persons by whom such use shall be permitted. The use of such space or spaces by any other Member or person not authorized by the Association may be enjoined by the Association or the Members entitled thereto.

#### **Section 5: Retained Easements**

Notwithstanding any prior transfer of legal title to the Common Properties by the Developer to the Association, the Developer shall be deemed to have retained an easement over the Common Properties for the purpose of completion and making repairs of improvements (including any additions) and for maintaining facilities to market Lots and Living Units.

#### **Section 6: Contract Limitations**

Declarant shall not, prior to transfer of title to the Common Properties or transfer of control pursuant to [Article II Section 2](#) above, enter into any contracts or leases (including a management contract) which will directly or indirectly bind the Association, unless such contract or lease provides that the

Association shall have the right of termination of any such contract or lease, without cause, which right is exercisable without penalty at any time after transfer of title or control, upon not more than 90 days notice to the other party to such contract or lease.

**Section 7: Easements For Encroachments**

If any portion of the Common Properties encroaches upon any Lot or Living Unit or any Lot or Living Unit encroaches upon the Common Properties of another Lot or Living Unit as a result of the construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements on the Properties, an easement for the encroachment and for the maintenance thereof shall exist so long as the encroachment exists.

**ARTICLE V  
COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1: Creation of the Lien and Personal Obligation of Assessments.**

The Developer for each Lot and Living Unit owned by him within the Properties hereby covenants and each Owner of any Lot or Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time. The Annual and Special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

**Section 2: Annual Assessments.**

Annual Assessments shall be due and payable in advance on the first day of January of each calendar year. After Annual Assessments have been set by the Board of Directors, the Board of Directors shall prepare and deliver or mail to each owner an individual statement of the Annual Assessment. Any owner may apply to the Board of Directors for approval to pay the Annual Assessment quarterly or monthly. Such approval is within the sole discretion of the Board of Directors. If such quarterly or monthly payments are allowed and not made when due, then the unpaid balance of the Annual Assessment shall be hereby accelerated and become immediately due and payable in full.

**Section 3: Purpose of Assessments**

The assessments levied by the Association shall be used exclusively for the purpose of promoting recreation, safety, and welfare of the residents in The Properties and in particular for the improvements and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon The Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and the creation of a reasonable contingency fund, reserves, working capital and sinking funds relating to the Common Properties.

**Section 4: Basis of Annual Assessments**

Under the year beginning January 1, 1983, the Annual Assessment shall be Three Hundred Sixty and No/100 Dollars (\$360.00) per lot or living unit. Thereafter, the Board of Directors shall prepare an Annual Budget for the Association to be approved by the Owners at the Annual Meeting of the Association. The Owners shall be notified by the Board of Directors of the time, date and place of the Annual Meeting of the Association at least thirty (30) days in advance of the Annual Meeting. The Annual Budget shall be furnished along with the Notice to each owner and shall include the Annual

Assessment proposed by the Board of Directors. The members shall approve the Annual Budget at the Annual Meeting.

**Section 5: Special Assessments for Capital Improvements**

In addition to the Annual Assessments authorized by Section 4 hereof, 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 Properties, including the necessary fixtures and personal property related thereto. Such Special Assessment may be payable in equal monthly installments as set out in Section 2 above.

**Section 6: Quorum for any Action Authorized Under Section 5**

Section Deleted in 1991

**Section 7: Reserve Fund**

The Association shall include as part of its Annual Assessment an amount which is reasonably necessary to establish and maintain an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Properties and any other area which the Association may be obligated to maintain. The fund shall be sufficient to accrue and maintain the reserve fund at thirty percent (30%) of the Annual Budget.

**Section 8: Working Capital Fund**

In addition to the reserve fund, during the first 36 months after sale of the first Living Unit, a working capital fund shall be established and maintained which shall be in an amount of not less than two months estimated regular assessment payments for each Living Unit. Each Living Unit's share of the working capital fund shall be collected and transferred to the Association at the time of closing of the purchase of a Living Unit by the Owner. Within 60 days after the sale of the first Living Unit, the contribution to the working capital fund for each unsold Living Unit shall be paid to the Association. The working capital fund shall be maintained in a segregated account for the use and benefit of the Association to insure that the Board of Directors shall have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors. Amounts paid into the working capital fund shall not be considered as advance payment of regular or special assessments.

**Section 9: Date of Commencement of Assessments**

The due dates for the Annual Assessments or Special Assessments shall be as follows:

- (a) Annual Assessments: The Annual Assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement, but which date shall not be later than sixty (60) days following sale of the first Living Unit.

The amount of the Annual Assessment which may be levied for the balance remaining in the first year of assessment shall be in an amount which bears the same relationship to the Annual Assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve (12). The same reduction in the amount of the assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The initial Annual Assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The Annual Assessments for a year after the first year, shall become due and payable on the first day of January of said year.

- (b) Special Assessments: Any Special Assessment levied as provided for herein shall become due and payable on the date set forth in the resolution establishing such Special Assessment.

**Section 10: Duties of the Board of Directors**

- (a) All duties and obligations of the Association not expressly requiring approval of the Owners and/or the Eligible Mortgage Holders are hereby expressly reserved to the Board of Directors. Any action taken by the Board of Directors pursuant to this section shall be binding upon the Association and the Owners.
- (b) Subject to the requirements of [Section 4](#) and [5](#) above, the Board of Directors of the Association shall fix the date of the commencement and the amount of the assessment whether annual or special against each lot or Living Unit for each assessment period at least thirty (30) days in advance of the date such assessment shall become due and payable. Upon fixing the date of commencement and the assessment, the Board of Directors shall prepare a roster of the properties and assessments applicable thereto which shall be kept in the Association's office and shall be available for inspection by any Owner.
- (c) Written notice of any assessment, annual or special, shall be sent to every Owner subject thereto. Such notice shall state the name and address of the Owner subject to such assessment, the amount of the assessment, whether such assessment is annual or special, if the assessment is special, the purpose of such Special Assessment, and the date such assessment shall be due and payable to the Association.
- (d) The Board of Directors shall upon request furnish to any Owner liable for any such assessment a certificate in writing signed by a majority of the officers of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 11: Effect of Non-Payment of Assessment The Personal Obligation of the Owner; The Lien; Remedies of Association.**

- (a) **Personal Obligation and Lien.** Any assessment levied shall be and remain the personal obligation of the Owner at the time such assessment was levied and shall not pass to such Owner's successors in title unless expressly assumed by them. If any assessment is not paid when due, then such assessment shall become delinquent and shall, together with any late charge, such interest thereon and costs of collection including, but not limited to reasonable and necessary attorneys fees, constitute and become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, personal representatives and assigns.
- (b) **Late Charge and Interest.** Any assessment not paid within ten (10) days of the date such assessment is due shall incur a late charge of five percent (5%) of the amount of the assessment not paid. Any assessment not paid within thirty (30) days of the date such assessment is due, shall, in addition to the late charge, bear interest on the amount of the unpaid assessment from the date such assessment was due, at the rate of eighteen percent (18%) per annum until such assessment is paid.
- (c) **Perfection and Foreclosure of Lien.** The Association shall perfect its lien by filing an Affidavit of Lien in the records of the County Clerk of Dallas County, Texas in a form prescribed by the Board of Directors. The Affidavit of Lien shall set forth the name and address of the Owner, the description of the property to which it applies, the amount of the indebtedness due and owing at the time of execution and the rate at which the indebtedness is accruing. Notice of the filing of the

affidavit of lien along with a copy of the affidavit of lien filed shall be given to the Owner against whose property the affidavit of lien is claimed. The Association shall have the right to foreclose the lien against the property by judicial action or by non-judicial foreclosure sale pursuant to the requirements of Texas Property Code #51.001, et seq. In the event the Association elects to pursue non-judicial foreclosure of any lien, the Association shall designate in writing a trustee, which trustee shall give the required notices and conduct the foreclosure sale according to law.

- (d) **Remedies of the Association.** In addition to the right to foreclose its lien, the Association shall have all other remedies at law or in equity necessary to recover the sums due and owing to the Association by the Owners, including but not limited to, bringing a personal action against any Owner to recover a money judgment. Any such personal action shall include the sum of the unpaid assessments plus late charges, interest, costs and reasonable attorneys fees incurred to bring same. The exercise by the Association of one remedy shall not be an election of remedies nor shall same preclude the exercise of any other remedy available, all such remedies being cumulative.

## **ARTICLE VI RIGHTS OF ELIGIBLE MORTGAGE HOLDERS**

Eligible mortgage holders shall have the following rights

- (a) Any rebuilding or repair of the Common Properties, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the declaration and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Living Units subject to eligible holder mortgages.
- (b) Any election to terminate the legal status of the Common Properties after substantial destruction or a substantial taking in condemnation of the project property must require the approval of eligible holders holding mortgages on Living Units which have at least 51 percent of the votes of Living Units subject to eligible holder mortgages.
- (c) When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity becomes an eligible mortgage holder or eligible insurer or guarantor at that time or later, the Association may elect to establish self management.
- (d) The rights of notice as set out in the Bylaws.

## **ARTICLE VII RECONSTRUCTION OR REPAIR**

### ***Section 1: Reconstruction or Repair of Common Properties***

In the event of fire, casualty or other disaster involving substantial damage to the Common Properties, within ten (10) days of receipt of determination of the amount of insurance proceeds available to the Association, the Association shall cause notice to be given of a special meeting of Members to be held not less than twenty (20) nor more than thirty (30) days from the giving of such notice. Such notice shall specify the amount of insurance proceeds available, the estimated cost of restoration and any other data deemed pertinent to the determination called for by this Section.

### ***Section 2: Sufficient Proceeds***

In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the

Properties, shall be applied to such reconstruction. Reconstruction of the Properties, as used in the Section, means restoring the Properties to substantially the same condition in which they existed immediately prior to the fire casualty or other disaster. Such reconstruction shall be caused to be accomplished by the Association or its duly authorized agents.

**Section 3: Insufficient Proceeds**

If the insurance proceeds are insufficient to reconstruct the Properties, damage to or destruction thereof shall be promptly caused to be repaired and restored by the Association, or its duly authorized agents, using proceeds of insurance, if any, on the Properties for that purpose, and the owners shall be liable for the Special Assessment or Assessments for any deficiency as hereinafter provided.

**Section 4: Insurance Proceeds**

The Association shall be and is hereby a designated Trustee to receive and administer all insurance proceeds received or to be received in the event of fire, casualty or other disaster involving substantial damage to the Common Properties.

**ARTICLE VIII  
CONDEMNATION**

In the event of any taking of all or a portion of the Common Properties by eminent domain or sale or other transfer in lieu thereof, if any repair or rebuilding of the remaining portions of the Common Properties is required as a result of such taking, the award received for such taking shall be used for such purpose. If all of such award is not used or if no repair or rebuilding is required, such award or the balance thereof, shall be distributed in equal shares to all members.

**ARTICLE IX  
PARTY WALLS**

**Section 1: General Rules of Law to Apply**

Each wall which is built as part of the original construction of the homes upon The Properties and placed on the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this [Article](#), the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

**Section 2: Sharing of Repair and Maintenance**

The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**Section 3: Destruction by Fire or Other Casualty**

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4: Weatherproofing**

Notwithstanding any other provision of this [Article](#), an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5: Right to Contribution Runs with Land**

The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner s successors in title.

**Section 6: Arbitration**

In the event of any dispute arising concerning party wall or under the provisions of this Article, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all of the arbitrators shall be final and conclusive of the question involved.

**ARTICLE X  
EXTERIOR MAINTENANCE**

**Section 1: Exterior Maintenance**

In addition to maintenance upon the Common Properties, the Association shall at the request of the Owner provide exterior maintenance upon each Lot and Living Unit which is subject to assessment under Article V hereof, as follow: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements.

**Section 2: Payment of Cost**

The exterior maintenance shall be requested in writing. If the Board of Directors of the Association requires, the Owner shall execute and deliver a contract, promissory note and such other instruments as in the opinion of the Board or its attorney are reasonably necessary to fix a mechanic s and material man s lien against the Owner s Lot or Living Unit prior to the time that any of the work is done. The note shall be payable as directed by the Board or as a part of the assessment or charge as provided in Article V.

**Section 3: Assessment of Costs**

The Board of Directors of the Association when establishing the annual assessment against each Lot or Living Unit for any assessment year as required under Article V hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall thereafter make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

**Section 4: Access at Reasonable Hours**

For the purpose solely of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any Living Unit at reasonable hours on any day except Saturday, Sunday or holidays.

**ARTICLE XIII  
PROTECTIVE COVENANTS**

Section 1. The following restrictions are imposed as a common scheme upon the Lot and Common Properties for the benefit of each other Lot and Common Properties and may be enforced by any Owner of a Lot or Living Unit.

- (a) No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Common Properties and not on any Lot unless placed in a suitable container, suitably located.

- (b) No building material of any kind or character shall be placed upon any Lot except in connection with construction approved as hereinafter provided. As soon as building materials are placed on any Lot in that connection, construction shall be promptly commenced and diligently prosecuted.
- (c) No clotheslines, drying yard, service yards, woodpiles or storage areas shall be so located as to be visible from a street, road or Common Properties.
- (d) Any exterior lighting installed on any Lot shall be either indirect or of such controlled focus and intensity as not to disturb the residents of adjacent property.
- (e) Ornamental post lights shall be designated to be in keeping with the lighting fixtures at the street or road corners.
- (f) No animals or poultry shall be kept on any lands within the Properties except ordinary household pets belonging to the household. Only signs advertising the sale or rental of a Lot and which are approved by the architectural control committee shall be allowed in the Properties.
- (g) No use of previously erected or temporary house structure or house trailer or non-permanent outbuilding shall ever be placed, erected or allowed to remain on any Lot within the Properties except during construction.
- (h) Boats, trailers, trucks, campers or commercial vehicles shall not be parked or maintained in the Properties; however, this restriction shall not restrict trucks or commercial vehicles making pickups or deliveries to or in the Properties, nor shall this restriction restrict trucks or commercial vehicles within the Properties which are necessary for the construction of residential dwellings or maintenance of the Common Properties.
- (i) None of the Lots may be improved, used or occupied for other than private, single-family residential purposes, other than the Common Properties; however, the Developer may use one or more Lots for a temporary office building and use the same as an office building during the development and sale of the Lots.
- (j) No structure shall be built upon any Lot that exceeds a height of twenty-five (25) feet.
- (k) All leases or rental agreements for Living Units shall be in writing and specifically subject to this Declaration, the Association Bylaws and Rules and Regulations. No Living Unit may be leased or rented for a period of less than six months.

**SECTION II** The Board of Directors, or Association members by a majority vote, may make and establish such reasonable rules and regulations as may be necessary or appropriate for the operation, use and occupancy of the properties.

## **ARTICLE XIV GENERAL PROVISIONS**

### ***Section 1: Duration***

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by The Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of

sixty seven percent (67%) of the Lots or Living Units and by sixty seven percent (67%) of the eligible holders holding mortgages on Living Units which have at least sixty seven percent (67%) of the votes of the Living Units subject to eligible holder mortgages has been recorded, agreeing to change said covenants and restrictions in whole or in part. For purposes of meeting the sixty seven percent (67%) requirement, when Living Units are counted, the Lot or Lots upon which such Living Units are situated shall not be counted. Provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

### **Section 2: Quorum**

The quorum required for any action by the Association authorized hereunder not reserved to the Board of Directors shall be as follows:

At the first meeting called, the presence at the meeting of Members in person or by proxy 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 present at the first meeting called, the first meeting shall be adjourned and a second meeting may be called, with notice as required, and the required quorum at any such subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

A member not in good standing shall not be counted for the purposes of a quorum.

### **Section 3: Voting Majorities**

- (a) Majority Vote. Any action by the Association shall require approval by fifty-one percent (51%) of the members present and eligible to vote at any Annual or Special Meeting at which a quorum is present, except those actions requiring a higher majority as stated in [Section b1](#) below.
- (b) Voting Majorities in Excess of Fifty-one Percent (51%). Any action by the Association regarding the following matters shall not be effective unless same shall be approved by the following majorities in excess of fifty-one percent (51%) at any Annual or Special Meeting of the Association at which a quorum is present:
  - (b1) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility as provided in Article IV, [Section 3](#), Paragraph (f) shall require approval by sixty-seven percent (67%) of the members eligible to vote, provided that any such action shall be precipitated by a written notice of the proposed action being sent to every Member of the Association at least ninety (90) days in advance of the meeting in which such action may be taken.
  - (b2) The right of the Association to levy a Special Assessment as provided in Article V, [Section 5](#) shall require approval by sixty-seven percent (67%) of the members eligible to vote, provided that any such action shall be precipitated by a written notice of the proposed special assessment being sent to every member of the Association at least thirty (30) days in advance of the meeting in which such special assessment may be levied.
  - (b3) The right of the Association to manage itself as provided in Article VI, Paragraph C shall require approval by sixty-seven percent (67%) of the members eligible to vote and the approval by fifty-one percent (51%) of eligible holders holding mortgages on Living Units subject to eligible holder mortgages.

#### **Section 4: Amendment**

The consent of the owners of Living Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated who are eligible to vote and the approval of eligible holders holding mortgages on Living Units which have at least sixty-seven percent (67%) of the votes of Living Units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Properties (or Living Units if applicable);
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use the Common Properties;
- (f) Responsibility for maintenance and repair of the several portions of the Properties;
- (g) Expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties other than as specifically provided in Article II hereof;
- (h) Boundaries of any unit;
- (i) The interests in the Common Properties;
- (j) Leasing of Living Units;
- (k) Imposition of any right of first refusal or similar restriction on the right of a Lot or Living Unit Owner to sell, transfer or otherwise convey his or her Lot or Living Unit;
- (l) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders or eligible insurers or guarantors of first mortgages on Living Units.

An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives written notice to approve additions or amendments to the Declaration who does not deliver or mail to the requesting party a negative response within three (3) days of receipt shall hereby be deemed to have approved such requests.

#### **HUD Approval of Amendment**

Notwithstanding the provisions of [Section 4](#) above, during the period prior to conversion of Class B membership to Class A membership as provided in [Article III, Section 2](#) hereof, every amendment to this Declaration must be approved by the U.S. Department of Housing and Urban Development.

#### **Section 5: Notices**

Any notice required to be sent under the provisions of this declaration shall be deemed to be properly sent and received when mailed postage prepaid, certified mail, return receipt requested, to the last known address of the person to receive such notice as that which appears on the records of the Association on the date such notice is given.

**Section 6: Enforcement**

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity by the Association or any Owner against any person or persons violating or attempting to violate any covenant or restriction or any decision of the Association which are made pursuant thereto, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association contained shall in no event be deemed a waiver of the right to do so thereafter. Likewise, Owners shall have similar rights of action against the Association.

**Section 7: Severability**

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.