

#305

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR

ENCINO FOREST SUBDIVISION UNIT 2, Phase III (THE WOODS OF ENCINO PARK)

AND ANNEXATION TO THE WOODS OF ENCINO PARK HOMEOWNERS ASSOCIATION

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STATE OF TEXAS § KNOW ALL MEN BY THESE PRESENTS: COUNTY OF BEXAR §

THIS DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR ENCINO FOREST SUBDIVISION UNIT 2, PHASE III (ALSO KNOWN AS THE WOODS OF ENCINO PARK) is made on the date hereinafter set forth by ENCINO FOREST UNIT 2, LTD., a Texas limited partnership ("Declarant"), for the purposes herein set forth as follows:

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property ("the Properties") known as ENCINO FOREST SUBDIVISION UNIT 2, PHASE III, San Antonio, Bexar County, Texas, and more fully described as follows:

Lots 24-41, inclusive, Block 3, New City Block 18133; Lots 5-18, inclusive, Block 11, New City Block 18155; and Lots 12-18, Block 12, New City Block 18156; ENCINO FOREST SUBDIVISION UNIT 2, PHASE III, in the City of San Antonio, Bexar County, Texas, according to plat thereof recorded in Volume 9526, Page 126, of the Deed and Plat Records of Bexar County, Texas;

WHEREAS, Declarant has created a residential community within the Properties with designated single-family residential lots "Lots" and "Common Facilities" (as those terms are defined herein) for the benefit of the present and future Owners thereof;

WHEREAS, Declarant desires to ensure the preservation of the values and amenities in said community and for the maintenance of said Common Facilities, and to this end desires to further subject the above-described real property, together-with such additions as may hereafter be made thereto as herein provided, 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 of the Owners thereof;

WHEREAS, Declarant 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 Common Facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, THE WOODS OF ENCINO PARK HOMEOWNERS ASSOCIATION has been incorporated under the laws of the State of Texas as a non-profit corporation for the purposes of exercising the functions aforesaid as to said ENCINO FOREST SUBDIVISION

UNIT 2, PHASE I, and such other real property as may be annexed thereto and become subject to the jurisdiction of said Association as provided herein; and Declarant desires to conform the restrictions on use of the herein described real property as necessary for the purposes of subjecting said property and the Owners thereof to the jurisdiction of said The Woods of Encino Park Homeowners Association;

WHEREAS, the real property above described as constituting Encino Forest Subdivision Unit 2, Phase III lies within and is a part of that certain tract described on Exhibit "A" to the Declarations of Covenants, Conditions and Restrictions of ENCINO FOREST SUBDIVISION UNIT 2, PHASE I, recorded in Volume 5888, Page 288 of the Real Property Records of Bexar County, Texas, under the terms of which Declarant has the right to annex said Encino Forest Subdivision Unit 2, Phase III to the real property subject to the jurisdiction of THE WOODS OF ENCINO PARK HOMEOWNERS ASSOCIATION and Declarant desires so to do;

NOW, THEREFORE, Declarant declares that the above-described property constituting ENCINO FOREST SUBDIVISION UNIT 2, PHASE III is and shall be held, transferred, sold, conveyed, occupied and enjoyed subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, all of which shall be deemed as running with the land, and shall hereafter be subject to the jurisdiction and assessments of The Woods of Encino Park Homeowners Association on the following terms, to-wit:

ARTICLE I

PURPOSE

The Properties are encumbered by these Restrictive Covenants for the following reasons: to insure the best and highest use and most appropriate development of the property; to protect Lot Owners against improper use of surrounding Lots; to preserve so far as practicable the natural beauty of the property; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each Lot with appropriate locations; to secure and maintain proper setbacks from streets and adequate free space; and, in general, to provide for development of the highest quality to enhance the value of investment made by Owners of Lots (as hereinafter defined).

ARTICLE II

DEFINITIONS

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 WOODS OF ENCINO PARK HOMEOWNERS ASSOCIATION, a Texas nonprofit corporation, its successors and assigns as provided for herein.

(b) "Properties" shall mean and refer to the above described properties known as Encino Forest Subdivision Unit 2, Phase III, and additions thereto, as are subject to this Declaration or any Amended or Supplemental Declaration.

(c) "Lot" shall mean and refer to each of the plots of land numbered as Lots 24-41, inclusive, Block 3, New City Block 18133; Lots 5-18, inclusive, Block 11, New City Block 18155; and Lots 12-18, Block 12, New City Block 18156; in the City of San Antonio, Bexar County, Texas, as shown on the Subdivision Plat.

(d) "Subdivision Plat" shall mean and refer to the map or plat of Encino Forest Subdivision Unit 2, Phase III, filed for record in Volume 9526, Page 126, Deed and

Plat Records of Bexar County, Texas and any amendment thereof upon filing of same for record in the Deed and Plat Records of Bexar County, Texas.

(e) "Living Unit" shall mean and refer to a single family residence and its attached or detached garage situated on a Lot.

(f) "Single Family" shall mean and refer to a group related by blood, adoption, or marriage or a number of unrelated house mates equal to the number of bedrooms in a living unit.

(g) "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 portion of a Lot, within the Properties, including contract sellers but excluding those having interest merely as security for the performance of an obligation.

(h) "Declarant" shall mean and refer to ENCINO FOREST UNIT 2, LTD., its successors and assigns who are designated as such in writing by Declarant, and who consent in writing to assume the duties and obligations of the Declarant with respect to the Lots acquired by such successor or assign.

(i) "Committee" and "Architectural Control Committee" or "ACC" shall mean and refer to the committee created hereinafter, subject to the provisions herein, by Declarant.

(j) "Common Areas" and "Common Facilities" shall mean and refer to all property leased, owned, or maintained by the Association for the use and benefit of the Members of the Association.

(k) "Common Maintenance Area" shall mean and refer to the Common Areas, if any, and the entrance monuments, perimeter walls, drainage facilities and detention ponds, esplanade and right-of-way landscaping and such other areas lying within indicated public easements or rights-of-way as deemed appropriate by the Board of Directors of the Association for the preservation, protection and enhancement of the property values and the general health, safety or welfare of the Owners.

(l) "Member" shall mean and refer to all those Owners who are members of the Association as provided herein.

(m) "Builder Member" shall mean such builders approved by Declarant for construction within the Subdivision and who own one or more Lots for construction of a residence and resale to others.

(n) "Board of Directors" and "Board" shall mean and refer to the Board of Directors of The Woods of Encino Park Homeowners Association, the election and procedures of which shall be as set forth in the Articles of Incorporation and By-Laws of the Association.

(o) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for ENCINO FOREST SUBDIVISION UNIT 2, PHASE III, and any amendments, annexations and supplements hereto made in accordance with the terms hereof.

ARTICLE III

USE

All Lots in the Subdivision shall be used for single family residential purposes only.

No Owner shall occupy or use his Lot or any improvements constructed thereon, or permit the same or any part thereof to be occupied or used for any purposes other than as

a private residence for the Owner, his family, guests and tenants. During the construction and sales period of the initial Living Units, the building may erect and maintain such structures as are customary in connection with such construction and sale of such property, including, but not limited to, a business office, storage areas, sign, model units, sales office, and construction trailer, but the size, location, and design of any storage sheds, signs, sales office and construction trailer shall be subject to ACC approval.

No building material of any kind shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements, and then the material shall be placed within the property lines of the Lot upon which the improvements are erected and shall not be placed on the street or between the curb and property line.

All temporary construction and sales structures shall be aesthetically compatible with the Subdivision development, as solely determined by the Committee.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

There is hereby created an Architectural Control Committee, initially composed of Lloyd A. Denton, Jr., Daniel Kossel, and Todd P. Helmer, to serve until their successors are named. A majority of the Committee may act for the Committee and no notice of any of its meetings shall be required. Subject to the terms hereinafter set forth, Declarant shall have the right to remove or add members to the Committee and fill vacancies in the committee membership and the last Lot owned by Declarant within the Properties shall be deemed to be an assignment to the Association of Declarant's powers with respect to ACC membership. Committee members shall not be entitled to compensation for their services rendered in such capacity.

No building, fence, wall, outbuilding or other structures or improvement shall be erected, altered, added onto, placed or repaired on any Lot in the subdivision until the complete plans including site plans, grading plans, floor plans, depicting room sizes and layouts, exterior elevations, any other plans or information deemed necessary by the ACC for the performance of its function ("Required Plans"), are submitted and approved in writing by the Architectural Control Committee as to the conformity and harmony of exterior design with existing structures in the Subdivisions, the location with respect to topography, existing trees, and finished elevation, and apparent conformity with the requirements of this Declaration. In addition, the Owner shall submit the identity of the individual or company intended to perform the work and projected commencement and completion dates. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties and may create and impose reasonable fees for processing of applications.

Within thirty (30) days after the Owner has submitted to the Committee the Required Plans and written notice that the Owner desires to obtain ACC approval, the Committee shall notify Owner in writing whether the Required Plans are approved or disapproved. If plans and specifications are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove them in part, conditionally or unconditionally, and reject the balance. In the event the plans submitted by the Owner have not been approved or disapproved within thirty (30) days after being submitted, the plans so submitted will be deemed to have been approved but a deemed approval shall not permit a violation of any of the terms of this Declaration nor extend to any deviation from or alteration to the plans actually submitted nor to any matter requiring a written variance.

The Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenant herein that may be vague, indefinite, uncertain or capable of more than one interpretation. The goal

of the Committee is to encourage the construction of dwellings of good architectural design, quality and proper size compatible with Declarant's conceptual plan for the subdivision. Dwellings should be planned and designed with particular attention to the design and aesthetic appearance of the exterior and the use of such materials, which, in the sole judgment of the Committee, create an attractive and harmonious blend with existing and proposed dwellings in the immediate area and the natural surroundings. The Committee may disapprove the construction or design of a home on purely aesthetic grounds where, in its sole judgment, such disapproval is required to protect the continuity of design or values of the neighborhood, and of other homeowners or to preserve the serenity and natural beauty of any surroundings. Members of said Committee and their representatives or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder. The Committee's evaluation of Required Plans is solely to determine compliance with the terms of this Declaration and the aesthetics or the proposed improvements and the Committee disclaims any responsibility to determine compliance with any applicable building code or other standard for construction.

The Architectural Control Committee shall have the right, but not the obligation, to grant variances and waivers relative to deviations and infractions of the Declaration or to correct or avoid hardships to Owners. Upon submission of a written request for same, the ACC may, from time to time, in its sole discretion, permit an Owner to construct, erect or install a dwelling which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the dwelling with such variances must, in the Committee's sole discretion, blend effectively with the general architectural style and design of the neighborhood and must not detrimentally affect the integrity of the subdivision or be incompatible with the natural surroundings. All requests for variances shall be in writing, shall be specifically indicated to be a request for variance, and shall indicate with specificity the particular standard sought to be varied and the nature of the variance requested. All requests for variances shall be deemed to be disapproved if the Committee has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the grant of any variance to an Owner. No individual member of the ACC shall have any personal liability to any Owner or any other person for the acts or omissions of the ACC if such acts or omissions were committed in good faith and without malice. Each request for a variance submitted hereunder shall be reviewed independently of similar and the grant of a variance to any one Owner shall not constitute a waiver of the Committee's right to deny a variance to another Owner. The decisions of the Architectural Control Committee with respect to variances shall be final and binding upon the applicant.

All decisions of the Committee shall be final and binding, and there shall not be revisions of any action of the Committee except by procedure for injunctive relief when such action is patently arbitrary and capricious. In the event of construction of improvements or threatened construction of improvements in violation of this Declaration, any Owner, the Association, Declarant or the Committee may seek to enjoin such construction or seek other relief against the Owner or building responsible therefor provided that each such offending party shall first be given written notice of the perceived violation and the opportunity to remedy the violation prior to the filing of the suit. Neither the Declarant, the Architectural Control Committee, nor any member of such Committee shall be liable in damages, or otherwise, to anyone submitting plans and specifications for approval or to any Owner who believes himself adversely affected by this Declaration by reason of mistake of judgment, negligence or non-feasance in connection with the approval or disapproval of plans or requests for variance.

The Architectural Control Committee shall be duly constituted and shall continue to function for the entire duration of this Declaration, including any extensions thereof. At such time as Declarant no longer owns any Lots subject to the jurisdiction and assessment of the Association, the Board of Directors shall have the right and obligation to appoint the members of the Committee.

ARTICLE V

RESTRICTIONS ON LOTS

All Lots in the subdivision shall be used for residential purposes. No residential building shall remain incomplete for more than twelve (12) months after construction has commenced. Temporary use may be made of a house for a builder's sales office, which shall be permitted until such house is occupied as a residence, provided such use is approved in writing by Declarant.

Every unit shall have and maintain a garage large enough to accommodate under a roof a minimum of two (2) full-sized automobiles. No garage shall be permanently enclosed for conversion to any other use. Open car ports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the ACC.

The term "residential purposes" as used herein shall be held and construed to exclude any commercial use, industrial use, apartment house, hospital, clinic and/or professional use, and such excluded uses are hereby expressly prohibited. Business use of a portion of a residence will be permitted providing that the use conforms to zoning regulations, is not detectable by sight, sound or smell, and does not increase or obstruct vehicular or pedestrian traffic. Permanent living quarters for domestic servants and allowing domestic servants to be domiciled with an Owner or resident shall be permitted.

ARTICLE VI

OUTBUILDING REQUIREMENTS

Every outbuilding, inclusive of such structures as a detached garage, storage building, gazebo, spa, greenhouse or children's playhouse, shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. All such outbuildings shall be subject to approval of the ACC. In no instance shall an outbuilding exceed one (1) story in height other than detached garage, nor shall the total floor area of outbuildings other than a detached garage exceed ten percent (10%), individually or in the aggregate, of the floor area of the main dwelling.

ARTICLE VII

BUILDING MATERIALS

The exterior walls of all residential buildings shall be constructed with masonry, rock, stucco, brick or masonry veneer for at least 65% of the total exterior as masonry. Notwithstanding the foregoing, the ACC is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Wall materials used on all Lots shall be restricted to those types and colors approved by the ACC. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock and all other material commonly referred to in Bexar County, Texas as masonry but shall exclude any product, regardless of composition, which is manufactured to have a wood or non-masonry appearance. Absent the express written consent of the ACC, vinyl siding and aluminum siding shall not be allowed.

Roofing shall be either slate, tile, factory fire treated wood, metal, or dimensional composition shingles, as approved by the ACC.

All fireplace flues and smoke stacks shall be enclosed and concealed from public view in finished chimneys or materials architecturally compatible with the finish material of the exterior walls of the dwelling or otherwise approved by the ACC.

ARTICLE VIII

FENCES

No fence or wall shall be built or maintained forward of the front wall line, nor any hedge planted or maintained forward of the front setback line, of the main structure, not including decorative walls or fences which are part of the architectural design of the main structure, and which are not to be built or maintained nearer than the building setback line of any Lot unless otherwise approved in writing by the ACC. All fences or walls located on his respective Lots are to be maintained at Owner's expense. All fences shall be all wood composed of one inch by four (1" x 4"), six feet (6') tall, notched, vertical wood planks, without gaps between planks, unless approved in writing by the ACC. An exception shall be made in case of retaining walls.

The ACC is empowered to waive the aforesaid composition requirements for fences and the aforesaid height or setback limitation in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept, design or material, and the resulting fence, decorative wall and/or retaining wall (whichever is applicable) will not detract from the general appearance of the neighborhood.

No fence, wall or hedge or shrub planting which obstructs sight lines shall be placed or permitted to remain on any corner Lot within the triangular area as formed by the extension of curb lines and a line connecting them at points twenty-five feet (25') from the intersection of the curb lines into the street, or in the case of a rounded property corner, from the intersection of three and one-half feet (3-1/2') tall shall be allowed in this inscribed triangle. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

ARTICLE IX

DRIVEWAYS AND SIDEWALKS

Driveways and sidewalks on each residential Lot must be constructed of broom-finish concrete, stamped concrete, or brick pavers. All sidewalks shall be of a width required by the City of San Antonio and placed and constructed within the street right-of-way in accordance with City of San Antonio specifications and ordinances, behind the curb and shall use a broom-finished concrete. All other materials and finishes are prohibited. Location, design and any decorative surface must be approved by the ACC. The driveway turnout shall be constructed in such manner as to provide an attractive transitional radius from the curb and gutter into the driveway entrance and shall prevent escape of drainage water from the street onto any Lots. Driveways and sidewalks must be shown on the site plan submitted for approval by the ACC. Asphalt and gravel driveways and sidewalks are specifically prohibited.

ARTICLE X

TEMPORARY STRUCTURES

No structure of a temporary character (sales structure, trailer, tent, shack, garage, barn or other outbuildings) shall be used on any Lot at any time for storage or as a residence, either temporarily or permanently. No trailer, camper, recreational vehicles, or similar vehicles shall at any time be parked in view of any other Lot or dwelling unit or connected to utilities situated within a Lot. No prefabricated dwelling or building previously constructed elsewhere may be placed or maintained on any Lot. No modular or mobile home, whether or not the wheels have been removed, may be placed or maintained on any Lot. All structures of a temporary character must be approved by the Architectural Control Committee.

ARTICLE XI

SIGNS

No signs, banners, or pennants of any kind shall be displayed to the public view on any single-family residential Lot except one (1) professional sign of not more than nine (9) square feet advertising the property for sale. Signs used by the Developer or original home builder to advertise the property during the construction and sales period shall be permitted, irrespective of the foregoing. Signs advertising subcontractors or suppliers are specifically prohibited. The sign may state only the name and phone number of the seller and/or their agent. For rent, for lease, distressed, foreclosures and bankruptcy references are specifically prohibited. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than 90 days in advance of the election to which they pertain and are removed within 15 days after the election. The ACC shall have control over all verbiage on all signs. Except for signs advertising a Lot for sale and adhering to the standards of this Article, all signs within the Properties shall be subject to the prior written approval of the ACC.

ARTICLE XII

MAINTENANCE

All yards and lawns shall be kept neat and well maintained and all grass, weeds, and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from each Lot and replacement of equal quality or value promptly installed. Lawns must be properly maintained (not to exceed six inches [6"] in height) and fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to public view. Building materials shall not be stored on any Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from each Lot.

Until a home or residence is built on a Lot, Declarant may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed therefrom. Declarant may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of any Lot shall be obligated to reimburse Declarant for the cost of such maintenance or removal upon demand.

ARTICLE XIII

LANDSCAPING

All front yards and side yards on all Lots must be planted with grass or other ground cover exclusive of any landscaped areas. Decorative ground cover rock in the front and side yards may not exceed ten (10%) percent of the total area of the front and side yards. Cuts into natural grade visible from the street are to be faced with masonry, sodding or landscaping. Allowances may be made for areas left in their natural state depending upon their appearance.

All yards and lawns shall be kept neat and well maintained and all grass, weeds, and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from each Lot and replacements of equal quality or value promptly installed. Lawns must be properly maintained (not to exceed six inches [6"] in height) and fences must be repaired and maintained and no objectionable or unsightly usage of Lots will be permitted which is visible to public view. Building materials shall not be stored on any Lot, and any excess materials not needed for construction and any building refuse shall promptly be removed from each Lot.

New residential lawns shall be seeded, sodded, sprigged, or otherwise treated within thirty (30) days after occupancy. Lot Owners or occupants shall also be required to provide and allow safe and adequate drainage within and across their Lot. No Owner or Lot occupant shall construct or maintain any building, fence, walk, landscaping, or other improvement or condition which diverts, impedes, backs up, or prevents the drainage and flow of surface water on, over, or across such Lot.

Until a home or residence is built on a Lot, Declarant may, at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgement, and have dead trees, shrubs and plants removed therefrom. Declarant may also, at its option, remove any excess building materials or building refuse situated on a Lot in violation of this covenant. The Owner of any Lot shall be obligated to reimburse Declarant for the cost of such maintenance or removal upon demand.

All Owners are advised to secure from the Texas Forest Service, local county agent, Texas Extension Forester at Texas A&M University, or elsewhere, information on oak wilt and other diseases which may affect their trees and may spread to trees on other Lots. Each Owner is responsible for taking such action as may be necessary on his property to ensure that oak wilt and other diseases are not spread to the trees of other Owners. Because there is no known cure for oak wilt and oak wilt almost always will spread from a diseased tree to its neighboring oaks, at a minimum, each Owner should:

- A. Destroy all infected oaks.
- B. Avoid unneeded pruning of trees, especially during the period February 1 - June 1, and immediately apply dressing to all wounds on oaks.
- C. Where oak wilt is detected, trench three feet deep in advance of infection front (100 feet is recommended) to stop the spread through connecting roots.
- D. Avoid infected oak firewood. As a precaution, do not keep any oak firewood for more than one heating season and cut firewood only in the summer.
- E. Use fungicide propiconazole to treat uninfected oaks when you become aware of oak wilt nearby.

The foregoing information regarding oak wilt is provided to alert Owners and neither Declarant or the Association shall be liable to any Owner in connection with the existence or spread of oak wilt on any Lot.

ARTICLE XIV

VEHICLES

No trailer, motor home, tent, boat, recreational vehicle, travel trailer, any truck larger than a three-quarter (3/4) ton pick-up, or wrecked, junked or wholly inoperable vehicle shall be kept, parked, stored or maintained on any portion of the front yard area of a Lot nor shall be kept, parked, stored, or maintained on other portions of the Lot, unless in an enclosed structure or in a screened area which prevents the view thereof from any Lots or dwelling and streets. Intermittent overnight parking of trailer, motor home, tent, boat, recreational vehicle or travel trailer for a period of time not to exceed twenty-four (24) consecutive hours will be permitted. No dismantling or assembling of an auto, trailer, any truck or any other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. The ACC, as designated in this Declaration, shall have the absolute authority to determine from time to time whether a vehicle and/or accessory is operable and adequately screened from public view. Upon an adverse determination by said ACC, the vehicle and/or accessory shall be removed and/or otherwise brought into compliance with this paragraph.

No vehicles, trailers, implements or apparatus may be driven or parked on any easement.

All matters set forth in this Article requiring approval shall require the express, advance, written approval of the ACC.

ARTICLE XV

NUISANCES

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

No Owner or occupant shall perform any work that will impair the structural soundness or integrity of another Living Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Living Units or their Owners or residents.

No exterior lighting of any sort shall be installed or maintained on a Lot where the light source is offensive or a nuisance to neighboring property (reasonable security or landscape, or tennis court lighting is permitted with the approval of the ACC).

No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry door and patio, intercoms used exclusively to protect the Lot and improvements, situated thereon) shall be placed or used upon any Lot.

All matters set forth in this Article requiring approval shall be deemed to be the express approval, in advance, of the ACC.

ARTICLE XVI

GARBAGE AND REFUSE DISPOSAL

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in sanitary containers, whether arranged for alley pickup or street pickup. No trash, ashes or other refuse may be thrown or dumped on any vacant Lot, park, street, Right-of-Way, or drainage area in the Properties. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble or debris shall be stored, kept, placed or maintained on any Lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, containers, and receptacles may be placed in front of a residence and beside a street for removal but shall be removed from view before the following day.

ARTICLE XVII

PETS

No animals, livestock, poultry, exotic or dangerous pets of any type (i.e., pit bulls, boa constrictors, ferrets, etc.) that may pose a safety or health threat to the community shall be raised, bred or kept on any Lot except for cats, dogs, or other generally recognized household pets of a reasonable number provided that they are not kept or maintained for any commercial purposes and provided further that no more than a total of four (4) adult animals may be kept on a single Lot. Adult animals for the purpose of these covenants shall mean and refer to animals one (1) year or older.

All such animals shall be kept in strict accordance with all local laws and ordinances (including leash laws), and in accordance with all rules established by the Association. It

shall be the responsibility of the owners of such household pets to prevent the animals from running loose or becoming a nuisance to the other residents.

ARTICLE XVIII

OIL AND MINING OPERATIONS

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon on any Lot. No tank for the storage of oil or other fluids may be maintained on any Lots above the surface of the ground.

ARTICLE XIX

WATER AND SEWAGE SYSTEMS

No individual water supply system shall be permitted on any Lot, including, but not limited to water wells.

ARTICLE XX

MICROWAVE, RADIO, TV ANTENNA, AND SOLAR COLLECTORS

No microwave dishes, radio, citizen band or otherwise, or television aerial wires or antennas shall be maintained on any portion of any Lot, except those which are fully enclosed or retractable within the structure of the Living Unit. No microwave dishes, antennas, receivers, or transmitters shall be placed on any Lot without being fully enclosed or fully screened from public view. Solar apparatus, if erected, must be maintained in such a way that it is screened from public view, installed in a location not visible from the street, and Rights of Way or other parcels or portions thereof, and must be approved by the ACC before erection.

ARTICLE XXI

CLOTHES HANGING DEVICES

Clothes hanging devices exterior to a dwelling shall not exceed six (6) feet in height.

ARTICLE XXII

UTILITY EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, if any, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or in the case of drainage easements, which may change or impede the direction of flow of water through drainage channels in such easements. The easement area of each Lot, if any, and all improvements in such are shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Neither Declarant nor any utility company using the easements herein or referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, streets or flowers or other property of the Owners situated on the land covered by said easements.

ARTICLE XXIII

MAINTENANCE AND ACCESS EASEMENTS

There is hereby created a right of ingress and egress across, over, and under the Properties for the sole purpose of installing, replacing, repairing, and maintaining all facilities for utilities, including, but not limited to, water, sewer, telephone, cable TV, electricity, gas and appurtenances thereto.

In the event that the Owner fails to maintain the Lot as required herein or in the event of emergency, the Declarant and/or the Association shall have the right but not the obligation to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Declarant shall not be liable for any damage so created unless such damage is caused by the Declarant's willful misconduct or gross negligence.

ARTICLE XXIV

WALL, LANDSCAPING, MAINTENANCE, AND ACCESS EASEMENTS

Declarant hereby reserves unto itself, the Association, and their respective assigns in writing, a fence, wall and landscaping easement, ten feet (10') in width along the boundary of Caliza Drive Lots 24-32, inclusive, Block 3, New City Block 18133. Said easement is retained and reserved for the purposes of construction, maintenance, repair, reconstruction, cleaning and/or maintenance of a perimeter fence and installation and maintenance of landscaping. The easement owners shall also have a right of ingress and egress over and upon said Lots for the purpose of access to the easement area for the purposes herein set forth.

Each Owner of said Lots 24-32 shall be required to maintain the portion of the perimeter fence traversing his or her lot fence in good repair and condition as originally installed. In the event that any of said Owners fail to properly maintain said fence as required herein, or in the event of emergency, the Declarant and/or the Association shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance of such fence. Entry upon a Lot as provided herein shall not be deemed a trespass, and the Declarant shall not be liable for any damage so created unless such damage is caused by the Declarant's willful misconduct or gross negligence. Fence repair or maintenance which is the responsibility of an Owner but which is performed by Declarant or the Association shall be at the expense of the Owner who shall be obligated to pay such charges on demand, the Association shall have a lien on the Owner's Lot to the extent of any unpaid costs of fence repair or replacement.

All landscaping and vegetation installed by Declarant or the Association within the ten foot easement herein described shall be maintained by the Association at the expense of the Association.

ARTICLE XXV

DRAINAGE EASEMENTS

Easements for drainage throughout the subdivision are reserved as shown on the Subdivision Plat, such easements being accepted thereon as "drainage easements". No Owner of any Lot in the subdivision may perform or cause to be performed any act which would alter or change the course of such drainage easements in a manner that would divert, increase, accelerate or impede the natural flow of water over and across such easements. More specifically and without limitation, no Owner or resident of a Living Unit may:

(1) alter, change or modify the existing natural vegetation of the drainage easements in a manner that changes the character of the original environment of such easements;

(2) alter, change or modify the existing configuration of the drainage easements, or fill, excavate or terrace such easements, or remove trees or other vegetation there from without the prior written approval of the ACC and the City of San Antonio's City Engineer;

(3) construct, erect or install a fence or other structure of any type or nature within or upon such drainage easements;

(4) permit storage, either temporary or permanent, of any type upon or within such drainage easements; or

(5) place, store or permit to accumulate trash, garbage, leaves, limbs or other debris within or upon the drainage easements, either on a temporary or permanent basis.

A copy of the grading plan for the Properties is attached hereto as Exhibit "B". The original grading plan is maintained by Declarant at its offices. By acceptance of a deed to any Lot, each Owner covenants and agrees to ensure such Lot is graded and maintained in accordance with the grading plan and that the drainage of such Lot is maintained in accordance with the grading plan.

The failure of any Owner to comply with the provisions of this Article shall in no event be deemed or construed to impose liability of any nature on the ACC and/or Declarant, and such Committee and/or Declarant shall not be charged with any affirmative duty to police, control or enforce such provisions. The drainage easements provided for in this Article shall in no way affect any other recorded easement in the subdivision.

ARTICLE XXVI

GARAGES

A garage able to accommodate at least two (2) full-sized automobiles must be constructed and maintained as a garage, for each Living Unit. Each driveway must accommodate two vehicles in front of the garage for off-street parking requirements. Rear detached garages shall be permitted provided they are constructed in compliance with the requirements of these covenants.

ARTICLE XXVII

MAXIMUM HEIGHT

No building or structure erected, altered or placed on, within or in the Properties shall exceed thirty-five feet (35') in height (measured from the top of the foundation to the topmost part of the roof) nor be more than two and one-half (2 1/2) stories in height, provided however, that all applicable ordinances, regulations, and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with.

ARTICLE XXVIII

MINIMUM AREA

The main residence building of each residence constructed on a Lot shall contain the minimum, contiguous square feet of living space set forth below, such square feet being exclusive of open or screened porches, terraces, patios, driveways, carports, garages and living quarters for domestic servant separated or detached from the primary living area; to wit:

- A. Single Story - Sixteen Hundred (1600) feet
- B. Two Story - Eighteen Hundred (1800) feet

ARTICLE XXIX

BUILDING SETBACKS

Front setback shall be twenty feet (20') from the front property line of each Lot for all structures.

Side yard setbacks shall be a minimum of five feet (5') from the side property lines of each Lot for all structures except a detached garage.

Rear setbacks shall be a minimum of fifteen feet (15') from the rear property line of each Lot for all structures except a detached garage.

Detached garages shall be no closer to any side property line than three feet (3') and no closer to any rear property line than five feet (5').

ARTICLE XXX

LOT CONSOLIDATION

Any Owner owning two (2) or more adjoining Lots or portions of two or more such Lots may, with the prior approval of the ACC, consolidate such Lots or portions thereof into a single building site for the purpose of construction one (1) residence and such other improvements as are permitted herein, provided, however, that no such building site shall contain less than five thousand (5,000) square feet of land and that the Lot resulting from such consolidation shall bear, and the Owner thereof shall be responsible for, all assessments theretofore applicable to the Lots which are consolidated and each such building site shall meet, all lawful requirements of any applicable statute, ordinance or regulation.

ARTICLE XXXI

ADDITIONS

Declarant may bring within the scheme of this Declaration and/or the jurisdiction of the Association, additional property lying within the area described or depicted in Exhibit "A" attached hereto, through the execution and filing of a supplementary Declaration of Restrictive Covenants, which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Said Declaration may contain such modifications as are necessary to reflect the different character of the added properties.

ARTICLE XXXII

ENFORCEMENT

If the Owner of any Lot, or its heirs, executors, administrators, successors, assigns or tenants, shall violate or attempt to violate any of the restrictions and covenants set forth in this Declaration, it shall be lawful for the Association, Declarant, or any Owner subject to this Declaration, to prosecute any proceedings against the person or persons violating or attempting to violate any such restrictions and covenants. The failure of any Owner or tenant to comply with any restriction or covenant will result in irreparable damage to Declarant and other Owners of Lots in the Subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law, but also may be enjoined or may be subject to an action for specific performance in equity in any court of competent jurisdiction. In the event an action is instituted to enforce the terms hereof or prohibit violations hereof, and the party bringing such action prevails, then in addition to

any other remedy herein provided or provided by law, such party shall be entitled to recover court costs and reasonable attorney's fees. The Architectural Control Committee, Association and/or Declarant shall not be charged with any affirmative duty to police, control or enforce the terms of this Declaration and these duties shall be borne by and be the responsibility of Lot Owners.

ARTICLE XXXIII

SECURITY

Security may be provided by the Association, from time to time; however, the Association is not now a provider of security, and the Owners must provide their own security for their home and property.

ARTICLE XXXIV

ATHLETIC FACILITIES

Tennis-court lighting and fencing shall be allowed only with the approval of the ACC. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed within ten feet (10') from the front property line of any Lot or the side lot lines of corner lots in the Subdivision without the prior written consent of the ACC.

ARTICLE XXXV

MEMBERSHIP IN THE ASSOCIATION

Every person or entity who is a record Owner of a free or undivided interest in any Lot which is subject to the jurisdiction of and to assessment by the Association shall be a member of the Association, provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation, shall not be a member.

ARTICLE XXXVI

VOTING RIGHTS

The Association shall have two classes of voting membership.

Class A. Class A Members shall be all those Owners as defined in Article XXXV above with the exception of Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article XXXV. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. Class B Members shall be Declarant and Builder Members. The Class B Members shall be entitled to three votes for each Lot in which they hold the interest required by Article XXXV above, provided that the Class B membership shall cease and become converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership; or

(b) January 1, 2010.

From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be Class A member entitled to one vote for each Lot in which it holds the interest required for membership.

All voting rights of an Owner may be suspended by the Board of Directors during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to Article XXXVI or is otherwise in default thereunder or under the Bylaws or Rules of Regulations of the Association.

ARTICLE XXXVII

COVENANTS FOR MAINTENANCE ASSESSMENTS

Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of a Lot, by acceptance of a deed thereto, 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 and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are 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 the obligation accrued.

The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Members, and in particular, for the improvement, maintenance and operation of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Properties by the members.

The annual assessment provided for herein shall commence as to all Lots on March 1, 1997, or such other date as the Board of Directors may fix. The annual assessments for both improved and unimproved Lots shall be determined by the Board of Directors in the manner provided for herein after determination of current maintenance costs and anticipated needs of the Association during the year for which the assessment is being made and the annual assessments for unimproved Lots shall be one-fourth (1/4) the annual assessments for improved Lots. Until January 1, 1998, the annual assessments for improved Lots shall not exceed \$180.00. From and after January 1, 1998, the maximum annual assessment which may be imposed by the Board of Directors, without membership vote, shall be an amount equal to ten percent (10%) above the prior year's annual assessment. A Lot shall be deemed to be an "improved Lot" when construction of a Living Unit thereon is completed and closing of a sale thereof has taken place, or when the Living Unit is occupied as a residence, whichever first occurs.

In addition to the annual assessments provided for above, the Association may levy, in any assessment year, a Special Assessment on improved Lots only, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement on or which is a part of the Common Facilities, or for such other lawful purpose related to the use of the Properties as the Board of Directors or the Owners may determine, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the improved Lot Owners 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 improved Lot Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Subject to the limitations stated above, the annual assessment may be adjusted by majority vote of the Board of Directors but shall not be increased by more than ten percent (10%) above that of a previous year with a vote of the membership. Any increase in the

annual assessment of more than ten percent (10%) above that of a previous year shall require approval of two-thirds (2/3) vote of each class of Members voting at a meeting duly called for that purpose.

The quorum required for any action authorized herein above shall be as follows: Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all members, or delivered to their residences, not less than thirty (30) days in advance of the meeting. At the first meeting called as provided above, 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, subject to the notice requirements set forth above, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (6) days following the preceding meeting. The Association may call as many subsequent meetings as may be required to achieve a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

The annual assessment provided for herein shall commence as to all Lots on the first day of March, 1997, or such other date as the Board of Directors may fix. The assessments for each calendar year shall become due and payable and shall be collected as the Board of Directors of the Association shall determine. The amount of the Annual assessment shall be an amount which bears the same relationship to the annual assessment provided for above as the remaining number of months in that year bear to twelve. When a Lot becomes an improved Lot, there shall be payable as of the first day of the month following the month when it becomes an improved Lot a sum equal to the difference between the annual assessment for unimproved Lots and the annual assessment for improved Lots, prorated over the balance of the year then remaining. The due date of any special assessment under the provisions hereof shall be fixed in the resolution authorizing such assessments.

In December of each year, beginning December, 1997, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the following-year 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 on reasonable notice. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Effect of Non-Payment of Assessments: The Lien; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of twelve percent (12%) per annum. Upon written notice to an Owner, and the expiration of thirty (30) days, the Association may bring an action at law against the Owner personally obligated to pay the same, and to foreclose the Association's lien against the Owner's Lot. Each 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 non-judicial or judicial foreclosure by an action brought in the name of the Association, the power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. No Owner shall be freed of liability for any assessments provided for herein by virtue of non-use of Common Area, or non-existence of Common Area.

In addition to the foregoing charges for delinquent accounts, each Owner shall be obligated to pay to the Association all actual costs of collection incurred by the Association and such reasonable late charges and collection charges as the Board of Directors may establish, all of which shall also be subject to the liens of the Association.

Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to assessment, provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale or transfer of such Lot pursuant to a decree of foreclosure or in satisfaction of mortgage debt. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Exempt Property. The charges and liens created herein shall apply only to the Lots, and the remainder of the Properties shall not be subject thereto.

ARTICLE XXXVIII

MAINTENANCE FUND AND GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Maintenance Fund: The Board, for the benefit of the Owners, shall establish and maintain a maintenance fund into which shall be deposited the annual assessments collected from Owners and which maintenance fund shall be used, without limitation, for the payment of the following:

(a) Taxes and assessments and other liens and encumbrances which shall properly be assessed or charged against the Common Areas rather than against the individual Owners, if any.

(b) Care and preservation of the Common Maintenance Area.

(c) The services of a professional person or management firm to manage the Association or any separate portion thereof to the extent deemed advisable by the Board of Directors, [provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon ninety (90) days prior written notice to the managing party] and the services of such other personnel as the Board of Directors or by the manager.

(d) Legal and accounting services.

(e) A policy or policies of insurance insuring the Association, its Directors, and Officers against any liability to the public or to the Owners (and/or invitees or tenants) incident to the operation of the Association in any amount or amounts as determined by the Board of Directors.

(f) Workers compensation insurance to the extent necessary to comply with any applicable laws.

(g) Such fidelity bonds as may be required by the Bylaws or as the Board of Directors may determine to be advisable.

(h) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against any individual Owner) which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the enforcement of this Declaration.

(i) Perpetual maintenance and enhancement for entry shall wall and monument and adjacent grounds, landscaping, lights, irrigation and electric, if any.

Powers and Duties of Board: The Board, for the benefit of the Owners, shall have the following general powers and duties, in addition to the specific powers and duties provided for herein and in the Bylaws of the Association:

(a) To execute all declarations of ownership for tax assessment purposes and with regard to the Common Areas, if any, on behalf of all Owners.

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

(c) To enter into contracts, maintain one or more bank accounts, and generally to have all the power necessary or incidental to the operation and management of the Association.

(d) To protect or defend the Common Areas from loss damage by suit or otherwise and to provide adequate reserves for replacements.

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

(f) To make available for inspection by Owners within sixty (60) days after the end of each year an annual report and to make all books and records of the Association available for inspection by Owners at reasonable times and intervals.

(g) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency.

(h) To enforce the provisions of any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provisions or rules.

(i) To collect all assessments and enforce all penalties for non-payment including the filing of liens and institution of legal proceedings.

The Board shall have the exclusive right to contract for all goods, services and insurance, payment of which is to be made from the maintenance fund and the exclusive right and obligation to perform the functions of the Board except as otherwise provided herein.

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

ARTICLE XXXIX

TITLE TO COMMON AREAS

All Common area within the Properties shall be conveyed to the Association free of lien prior to the conveyance of the first Lot by the Declarant. The Association shall own all Common Areas in fee simple and assume all maintenance obligations with respect to any

Common Areas which may be hereafter established. Nothing contained herein shall create an obligation on the part of Declarant to establish any Common Area.

From and after the date on which title to any Common Area vests in the Association, the Association shall purchase and carry a general comprehensive public liability insurance policy for the benefit of the Association and its members, covering occurrences on the Common Areas. The policy limits shall be determined by the Board of Directors of the Association. The Association shall use its best efforts to see that such policy shall contain, if available, cross-liability endorsements or other appropriate provisions for the benefit of members, Directors and the management company retained by the Association (if any), insuring each against liability to each other insured as well as third parties. Any proceeds of insurance policies owned by the Association shall be received, held in a segregated account and distributed to the Association's general operating account, members, Directors, the management company and other insured, as their interests may be determined.

The Association shall not convey or mortgage any Common Area without the consent of two-thirds (2/3) or more of the Lot Owners.

ARTICLE XL

AMENDMENT

This Declaration shall remain in force and effect until January 1, 2010, at which time, and each tenth anniversary, thereafter, this Declaration shall be renewed for a period of ten (10) years unless two-thirds (2/3) of the Owners of Lots shall file a written agreement to abandon same. This Declaration may be amended by written instrument executed by the Owners of two-thirds (2/3) or more of the Lots, provided that no amendment prior to January 1, 2010, shall be effective until approved and executed by Declarant and filed of record in the Official Public Records of Real Property of Bexar County, Texas. Notwithstanding the foregoing, Declarant shall have the right to file an amendment to this Declaration, without the necessity of joinder by any other Owner of Lots, or any interest therein, for the limited purposes of correcting a clerical error, clarifying an ambiguity, removing any contradiction in the terms hereof, or for the purpose of making such additions or amendments hereto as may be required by FHA, HUD or VA to qualify the Properties for mortgage guaranties issued by FHA and/or VA.

ARTICLE XL I

FHAVA APPROVAL

Absent Declarant's written waiver, then for so long as the Declarant, its successors and assigns, have a controlling vote of the Association, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: (a) annexation of property other than within the area described in Article XXXI hereof (b) dedication of Common Area; and (c) amendment of this Declaration other than pursuant to Article XL hereof.

ARTICLE XL II

GOVERNMENTAL REQUIREMENTS

Section 1. Owner's Acknowledgment. The Properties and Lots lie within the area classified as the Edwards Aquifer Recharge Zone and as such are subject to the rules and regulations of agencies of the State of Texas, including the Texas Natural Resources Conservation Commission (TNRCC), governing the use of said land, in addition to the ordinances of the City of San Antonio and statutes, or regulations affecting the Properties enacted by other governmental authorities. Owners are advised that such requirements and prohibitions may relate to the types of pesticides and fertilizers which may be used,

minimum topsoil requirements, inspection of sewer laterals prior to covering, and criteria standards for sewer pipe, among other matters. Each Owner is responsible for ascertaining all such requirements and prohibitions with respect to his Lot and, by acceptance of a deed to a Lot, agrees to abide by the same. No statement herein, nor action by the Declarant, Committee, or Association shall act to relieve an Owner from such duty of compliance. Lot Owners are advised to obtain, read and use What's Bugging You? A Practical Guide to Pest Control, available from the Edwards Underground Water District (210/222-2204), or equivalent information produced by recognized authorities such as the Soil Conservation Service, Texas Department of Agriculture, U.S. Dept. of Agriculture, etc.

Section 2. Additional Obligations of Builders and Contractors. By acceptance of a deed to a Lot, or initiating construction of a residence or improvements to a Lot, each Builder Member and contractor assumes responsibility for complying with all certifications, permitting, reporting, construction, and procedures required under all applicable governmental rules, regulations, and permits, including, but not limited to those promulgated or issued by the Environmental Protection Agency and related to Storm Water Discharges from Construction Sites (see Federal Register, Volume 57, No. 175, Pages 41176 et seq.), and with the responsibility of ascertaining and complying with all regulations, rules, rulings, and determinations of the Texas Natural Resources Conservation Commission (TNRCC), related to each Lot, including, without limitation, the provisions of chapters 325 and 331, Texas Administrative Code, and any specific rulings made pursuant to the terms thereof. The foregoing references are made for the benefit of builders and contractors and do not in any way limit the terms and requirements of this covenant and the requirement that all Builder Members and contractors comply with all governmental regulations, and any plan required by such regulations such as a Storm Water Pollution Plan, affecting each Lot and construction site with which they are associated, including delivery to Declarant of a certification of understanding relating to any applicable NPDES permit prior to the start of construction. EACH BUILDER MEMBER AND CONTRACTOR, BY ACCEPTANCE OF A DEED TO A LOT OR UNDERTAKING THE MAKING OF IMPROVEMENTS TO A LOT, HOLDS HARMLESS AND INDEMNIFIES DECLARANT FOR ALL COSTS, LOSS, OR DAMAGE OCCASIONED BY THE FAILURE TO ABIDE BY ANY APPLICABLE GOVERNMENTAL STATUTE, RULE, REGULATION OR PERMIT RELATED TO THE PROPERTIES.

Section 3. Remedies of Declarant and the Association. By acceptance of a deed to a Lot, each Builder Member and Owner agrees that Declarant and the Association shall have the right to enter upon any Lot on which one or more conditions or activities prohibited by appropriate governmental authority is maintained, or on which there has been a failure to perform any act required by appropriate governmental authority, for the purpose of curing any such violation, provided that the Owner or Builder Member has been given five days prior written notice and has failed to remedy the complained of violation within such time, and each such Owner and Builder Member indemnifies and holds harmless Declarant and the Association from all cost and expense of such curative action and any cost or expense of penalty or fine levied by any governmental authority as a result of the act or failure to act of the Owner or Builder Member with respect to his Lot or the Properties. The foregoing remedy shall be cumulative of all other remedies for violations of provisions of these covenants.

ARTICLE XL III

GOVERNING LAW

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS AND IT IS AGREED THAT ANY ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION

HEREWITH SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION
SITTING IN BEXAR COUNTY, TEXAS.

ARTICLE XL IV

INTERPRETATION

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

ARTICLE XL V

OMISSIONS

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

ARTICLE XL VI

GENDER AND GRAMMAR

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

The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration.

In the event of conflict between the terms of this Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

ARTICLE XL VII

ADDITIONAL INFORMATION

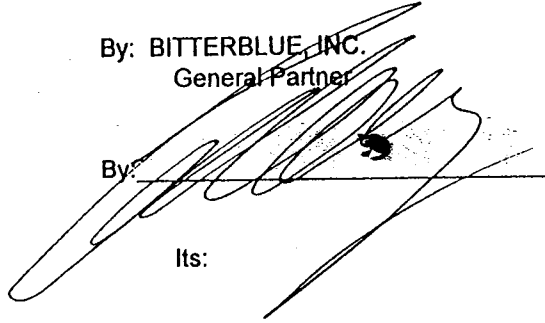
Architectural Design Guidelines for the subdivision, Rules and Regulations of the Association, and the other documents and information which may affect an Owner, prospective Owner, Builder Member, or contractor for improvements to a Lot are maintained at the offices of the Association and Declarant at the address shown below. Each Owner and prospective Owner is advised to carefully examine each of such documents in addition to these Restrictions to determine his rights and obligations.

EXECUTED effective the 19th day of February, 1997.

DECLARANT

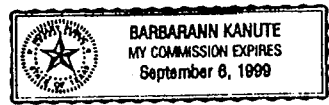
ENCINO FOREST UNIT 2, LTD.

By: BITTERBLUE, INC.
General Partner

By: 
Its:

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledge before me on the 19th day of February, 1997, by Lloyd A. Denton, Jr., General Partner of Bitterblue, Inc., a Texas corporation, General Partner of Encino Forest Unit 2, Ltd., a Texas limited partnership, on behalf of said corporation and partnership.




Notary Public, State of Texas

LIENHOLDER'S CONSENT

The undersigned, being the owners and holders of existing mortgages and liens upon and against the real property known as ENCINO FOREST SUBDIVISION UNIT 2, PHASE III, as more fully described above, (the "Properties"), and acting solely as mortgagees and lienholders and at the specific request of the Declarant therein named, do hereby consent to and join in this Declaration for the limited purposes herein stated.

The undersigned hereby join in the execution of this instrument for the sole purpose of subordinating the liens held by the undersigned to all of the provisions of this DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS FOR ENCINO FOREST SUBDIVISION UNIT 2, PHASE III (with the exception of the paragraph of Article XXXVII entitled "Subordination of the Lien of Mortgages"). Any Owner who accepts title to any of the Properties subject to this Declaration specifically acknowledges that lienholders are not parties to this Declaration except for the sole purpose of subordinating their liens as set out above, and each Owner who accepts title to any of the Lots hereby

specifically and unconditionally releases and discharges said lienholders from any claims or liability with respect to, or arising out of, this instrument except as to actions which may hereafter be taken by lienholders as successor(s) to the interest of Declarant.

SIGNED this 25 day of February, 1997.

LIENHOLDER:

JEFFERSON STATE BANK

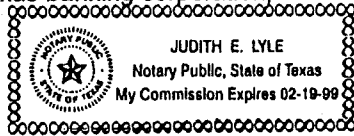
By: [Signature]
Its: Senior Vice President

LIENHOLDER:

[Signature]
MARY DUANE DAWSON

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

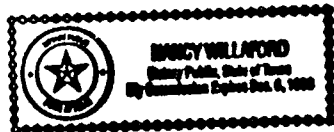
This instrument was acknowledged before me on the 26 day of February, 1997, by Jeff Goodrich, Senior Vice President of Jefferson State Bank, a Texas banking corporation, on behalf of said corporation.



[Signature]
Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the 25th day of February, 1997, by Mary Duane Dawson.



[Signature]
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

ENCINO FOREST UNIT 2, LTD.
Attn: Sarah Carrington
3330 Oakwell Court, Suite 110
San Antonio, Texas 78218

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