

0307 01-20-7587

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THE HEIGHTS OF CARRIAGE HILLS

THIS DECLARATION is made on the date hereinafter set forth by CENTEX HOMES, a Nevada general partnership, hereinafter referred to as the "Declarant".

WITNESSETH

WHEREAS, the Declarant is the owner of certain real property in Bexar County, Texas, described on Exhibit "A" attached hereto and incorporated herein by reference as The Heights of Carriage Hills; and,

WHEREAS, Declarant desires to create a planned community known as The Heights of Carriage Hills on the land described on Exhibit "A" attached hereto, and such other land as may be added thereto pursuant to the terms and provisions of this Declaration;

NOW THEREFORE, the Declarant declares that the Property shall be held, sold and conveyed subject to the restrictions, covenants and conditions declared below, which shall be deemed to be covenants running with the land and imposed on and intended to benefit and burden each Lot and other portions of the Property in order to maintain within the Property a planned community of high standards. Such covenants shall be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "Association" shall mean and refer to The Heights of Carriage Hills Homeowners Association, Inc., a Texas nonprofit corporation, established for the purposes set forth herein.

Section 1.2. "Builder" shall mean Centex Homes and/or any other residential building company acquiring Lots from the Declarant for the construction and sale of single family homes.

Section 1.3. "City" shall mean and refer to the city of San Antonio, Bexar County, Texas.

Section 1.4. "Common Areas" shall mean and refer to that portion of the Property, if any, conveyed to the Association for the use and benefit of the Owners, including, without limitation, the following improvements located thereon: parkways, medians, islands, entry gates, private streets, landscaping, walls, bridges, safety easements or park areas.

Section 1.5. "Common Maintenance Areas" shall mean and refer to the Common Areas, if any, the median and adjoining rights-of-way of De Zavola Street and any areas within public rights-of-way, easements (public and private) and any improvements or landscaping that the Board of Directors of the Association deems it necessary or appropriate to maintain for the common benefit of the members.

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Section 1.6. "Declarant" shall mean and refer to: (i) Centex Homes, a Nevada general partnership, and (ii) any person or entity to whom Centex Homes assigns and/or designates as Declarant, which assignment may be a partial assignment or a designation to specific rights and obligations (regardless if such right or obligation relates to the Property owned by such assignee or designee) or to specific portions of the Property or a complete assignment or designation.

Section 1.7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Heights of Carriage Hills, and any amendments and supplements thereto made in accordance with its terms.

Section 1.8. "Lot" shall mean and refer to any of the plots of land indicated upon the recorded subdivision plat(s) of the Property or any part thereof creating single-family homesites. Common Areas and areas deeded to a governmental authority or utility, together with all improvements thereon, shall not be included as part of the definition of a Lot.

Section 1.9. Intentionally Omitted.

Section 1.10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.11. "Plat" shall mean and refer to the Plat of The Heights of Carriage Hills, recorded in Volume 9551, Page 102-103 of the Deed and Plat Records of Bexar County, Texas and any future subdivision plat recorded against the Property that subdivides the Property or a portion thereof into Lots.

Section 1.12. "Property" shall mean and refer to the real property described on the attached Exhibit "A", and such additions thereto as may be brought within the jurisdiction of the Association and be made subject to this Declaration. The Property is sometimes referred to herein as "the subdivision".

Section 1.13. "Unit" shall mean and refer to any residential dwelling situated upon any Lot.

ARTICLE II

ASSOCIATION

Section 2.1. Membership. The Declarant and every Owner of a Lot by virtue of ownership of such Lot shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. There shall be two (2) classes of membership, Class A and Class B as described in Section 2.7.

Section 2.2. Funding. Subject to the terms of this Article II, the Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements to the Common Areas or Common Maintenance Areas, such assessments to be established and collected as hereinafter provided. Such assessments will remain effective for the full term (and extended term, if applicable) of the within covenants. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment

is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them, in writing.

Section 2.3. Annual Assessment or Charge.

a. **Units Owned by Class A Members.** Subject to the terms of this Article, each improved Lot is hereby subject to an initial regular annual assessment of \$400.00 [until such regular assessment is modified as provided in Section 2.3(c) below], for the purpose of creating a fund to be designated and which assessment will be paid by the Owner or Owners of each such Lot in advance in monthly, quarterly or annual installments, commencing as to all Lots on which an occupied Unit is then located on the conveyance of the first Lot to a Class A Member and as to all other Lots as of the occupancy or sale (whichever is earlier) of a Unit thereon. The annual assessment for unimproved Lots shall be one-fourth (1/4) the annual assessment for improved Lots. A Lot shall be deemed to be an "improved Lot" when construction of a Unit thereon is completed and closing of a sale thereof has taken place, or when the Unit is occupied as a residence, whichever first occurs. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly or annually, will be determined by the Board of Directors of the Association at least thirty (30) days in advance of each assessment period. Said rate may be adjusted within the limit permitted by the Bylaws from time to time by the Board of Directors as the needs of the Association may, in the judgment of the Directors, require. The assessment for each Lot shall be uniform except as provided in Subsection (b) of this Section 2.3. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

b. **Units on Lots Owned by Declarant.** Notwithstanding the foregoing, the Declarant owning unimproved Lots or Units that are not occupied shall pay assessments at the rate of one-fourth (1/4) the regular assessment charged to Owners so long as there is a Class B membership as set forth in Section 2.7. Declarant hereby covenants and agrees that in the event that the regular assessment revenues are insufficient to pay the operating expenses of the Association, it shall provide the funds necessary to make up the deficit, within thirty (30) days of receipt of request for payment thereof from the Association, provided that if the deficit is the result of the failure or refusal of an Owner or Owners to pay their regular assessments, the Association shall diligently pursue (the Declarant may also pursue at its option) all available remedies against such defaulting Owners, including the immediate institution of litigation to recover the unpaid assessments, and shall reimburse the Declarant the amounts, if any, so collected. In the alternative, Declarant shall have the right to pay full Class A assessments on its Lots without thereby relinquishing its Class B status and shall then be excused from the payment of any budget deficits.

c. **Basis and Maximum of Regular Assessments for Class A Members.** Until January 1st of the year immediately following the conveyance of the first Lot to a Class A member, the maximum regular assessment shall be \$100.00 per Lot per year for unimproved Lots and the maximum regular assessment shall be \$ 450.00 per Lot per year for improved Lots.

(i) From and after January 1st of the year immediately following the conveyance of the first Lot to a Class A member, the maximum regular assessment for Class A members shall be increased each year 10% above the maximum assessment for the

previous year without a vote of the membership. This increase in the maximum assessment does not mean that the Board will or has to increase the assessment to the maximum level when it sets the regular assessment.

(ii) From and after January 1st of the year immediately following the conveyance of the first Lot to a Class A member the maximum regular assessment for Class A members may be increased more than 10% above the prior year's maximum by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting called for this purpose. Written notice of such meeting shall be sent to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as and incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

d. **Purposes of Maintenance Fund.** The Association shall establish an assessment fund composed of regular assessments and shall use the proceeds of such fund in providing for normal, recurring expenses related to the Common Maintenance Areas or that are set forth in the Association's budget. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Maintenance Areas (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for landscaping) and the improvements to such Common Maintenance Areas, such as sprinkler systems, provided that the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Maintenance Areas; perpetual maintenance and enhancement for fences, streets, columns, signage (including traffic signs), walls, grounds, landscaping, street lights, entry gates, islands, private streets; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions and conditions affecting the Property to which the regular assessment fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of the regular assessment; employment of policemen and watchmen, if any; and doing any other thing or things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board of Directors in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Maintenance Areas. The fund shall be established and maintained out of regular annual assessments.

Section 2.4. Special Assessments for Working Capital Fund, Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessments authorized above, the Association may levy special assessments as follows:

a. Upon the sale of each Lot to a Class A Member, a special assessment equal to three (3) months' estimated regular assessment may be assessed which shall be due and payable upon conveyance of the Lot to a Class A Member. The aggregate fund established by such special assessment shall be maintained in a segregated account, and shall be available for all necessary expenditures of the Association.

b. 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 nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Maintenance Areas, including fixtures and personal property related thereto may be assessed. The Association shall not commingle the proceeds of such special assessments with the regular assessment fund. Such proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question.

c. The Board of Directors shall determine the necessity and the amount of any special assessment. Special assessments shall not be effective unless approved by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting called for the purpose of approving the special assessments and conducting other business, if any. Written notice of such meeting shall be sent to each member not less than ten (10) days nor more than fifty (50) days in advance of the meeting.

Section 2.5. Non-payment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date shall bear interest from the due date at the highest rate of interest allowed by Texas law as amended from time to time. The Association shall have the authority to impose late charges to compensate for the administrative and processing costs of late payments on such terms as it may establish by duly adopted resolutions and the Association may bring an action at law against the Owner personally obligated to pay the same. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Maintenance Areas or abandonment of such Owner's Lot.

Section 2.6. Subordinated Lien to Secure Payment. To secure the payment of any assessment established hereby and to be levied on individual Lots as above provided, there is hereby reserved a lien for the benefit of the Association, said lien to be enforceable through appropriate proceedings at law or in equity by such beneficiary; provided, however, that each such lien shall be specifically made secondary, subordinate and inferior to all liens, present and future, given, granted, and created by or at the instance and request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or the improvement of any such Lot; and further provided that as a condition precedent to any proceeding to enforce such lien upon any Lot upon which there is an outstanding valid and subsisting first mortgage lien, said beneficiary shall give the holder of such first mortgage lien sixty (60) days written notice of such proposed action, such notice, which shall be sent to the nearest office of such first mortgage lienholder by prepaid U.S. registered mail, to contain the statement of the delinquent assessments upon which the proposed action is based. Sale or transfer of a Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale, foreclosure or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall have the right to file notices of liens in favor of the Association in the Official Public Records of Bexar County, Texas.

Section 2.7. Voting Rights. The Association shall have two classes of voting membership:

a. **Class A.** Class A members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any Lot.

b. **Class B.** The Class B member shall be the Declarant who shall be entitled to three (3) votes for each Lot that Declarant owns. The Class B membership shall cease and be converted to Class A membership one hundred twenty (120) days after the conveyance of the Lot which causes the total votes outstanding in the Class A membership to equal the total votes outstanding in the Class B membership, or ten (10) years after conveyance of the first Lot to a Class A member, whichever occurs earlier.

c. **Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article II or is otherwise in default hereunder or under the Bylaws or Rules and Regulations of the Association.

ARTICLE III

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

Section 3.1. Purpose of Regular Assessment Fund. The Board, for the benefit of the Owners, shall provide and shall pay for out of the regular assessment fund provided for in Article II above 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 Areas.

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, (provided that any contract for management of the Association shall be terminable by the Association, with no penalty upon no more than ninety (90) days prior written notice to the managing party) and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

d. Legal and accounting services.

e. A policy or policies of insurance insuring the Association and/or its Board of 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, including a policy or policies of insurance as provided herein in Article IV.

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 may determine to be advisable.

h. Normal recurring expenses as described in paragraph 2.3 (d).

i. Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, structural alterations, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board 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.

Section 3.2. 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 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 and the Common Maintenance Areas (if desired by the Board) from loss or 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 in writing 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 fiscal 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.

Section 3.3. Board Powers Exclusive. 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.

Section 3.4. Maintenance Contracts. 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 IV

TITLE TO COMMON AREAS

Section 4.1. Association to Hold. 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 Areas.

Section 4.2. Liability Insurance. 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 or the Common Maintenance Areas (if desired by the Board). The policy limits shall be as 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 insureds, as their interests may be determined.

Section 4.3. Condemnation. In the event of condemnation or a sale in lieu thereof of all or any portion of the Common Areas, the funds payable with respect thereto shall be payable to the Association and shall be used by the Association to purchase additional Common Areas to replace that which has been condemned or to take whatever steps it deems reasonably necessary to repair or correct any damage suffered as a result of the condemnation. In the event that the Board of Directors of the Association determines that the funds cannot be used in such a manner due to the lack of available land for additional Common Areas or for whatever reason, any remaining funds may be distributed to each Owner on a pro rata basis.

ARTICLE V

ARCHITECTURAL REVIEW

Section 5.1. Architectural Control Committee. A committee to be known as the Architectural Control Committee (the "ACC") shall be established consisting of three (3) members.

a. The members of the ACC shall be appointed, terminated and/or replaced by the Declarant so long as there is Class B membership. Thereafter, the members of the ACC shall be appointed, terminated and/or replaced by the Board of Directors. The members appointed to the ACC are Steve Hamilton, Pat Bibb and Damon Lyles.

b. The purpose of the ACC is to enforce the architectural standards of the community and to approve or disapprove plans for improvements proposed for the Lots.

c. The ACC shall act by simple majority vote, and shall have the authority to delegate its duties or to retain the services of a professional engineer, architect, designer, inspector or other person to assist in the performance of its duties.

Section 5.2. Scope of Review. No building, fence, wall, outbuilding, landscaping, pool, athletic facility or other structure or improvement shall be erected, altered, replaced, added onto or repaired upon any portion of the Property without the prior written consent of the ACC, provided however, that improvements erected, altered, added onto or repaired by Declarant shall be exempt from the provisions of this Article V. Notwithstanding the above, the cost of such repairs which are under \$500.00 shall not require the prior written consent of the ACC.

Section 5.3. Submission of Plans. Prior to the alteration, addition, replacement or construction of any structure or improvement upon any Lot, the Owner (excluding Declarant) thereof shall first submit to the ACC one (1) complete set of plans and specifications for the proposed improvements, including site plans, grading plans, floor plans depicting room sizes and layouts, exterior elevations, specifications of materials and exterior colors, and any other information deemed necessary by the ACC for the performance of its function. Notwithstanding anything contained in this Section 5.3, Declarant may submit one (1) set of plans and specifications for pre-approval and, thereafter, shall not be required to resubmit pre-approved plans for use on any Lot except in the event that substantive variations from such plans are proposed.

Section 5.4. Plan Review. Upon receipt by the ACC of all of the information required by this Article V, it shall have thirty (30) days in which to review said plans. The proposed improvements will be approved if, in the sole opinion of the ACC: (i) the improvements will be of an architectural style and material that are compatible with the other structures in the Property; (ii) the improvements will not violate any restrictive covenant or encroach upon any easement or cross platted building set back lines; (iii) the improvements will not result in the reduction in Property value, use or enjoyment of any of the Property; and (iv) the improvements will be substantially completed, including all cleanup, within four (4) months of the date of commencement [7 months for the construction of a complete house]. In the event that the ACC fails to issue its written approval within thirty (30) days of its receipt of the list of the materials and documents required to complete the Owner's submission, the ACC's approval shall be deemed to have been granted without further action, provided that the Owner has written proof of the ACC's receipt of the Owner's request to review the plans and provided that such plans do not specifically violate the restrictions set forth herein.

Section 5.5. Non-conforming Structures. If there shall be a material deviation from the approved plans in the completed improvements, such improvements shall be in violation of this Article V to the same extent as if erected without prior approval of the ACC. The ACC, the Association or any Owner may maintain an action at law or in equity for the removal or correction of the non-conforming structure and, if successful, shall recover from the Owner in violation all costs, expenses and fees incurred in the prosecution thereof.

Section 5.6. Immunity of ACC Members. 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. The Association shall defend any action brought against the ACC or any member thereof arising from acts or omissions of the ACC committed in good faith and without malice.

Section 5.7. Address for Notice. Requests for ACC approval or correspondence with the ACC shall be addressed to Centex Homes, 16414 N. San Pedro, Suite 700, San Antonio, Texas 78232, Attention Damon Lyles, or such other address as may be designated from time to time by the ACC. No correspondence or request for approval shall be deemed to have been received until actually received by the ACC in form satisfactory to the ACC.

Section 5.8. Variances. The ACC 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 and absolute discretion, permit an Owner to construct, erect or install a dwelling or other improvement which is in variance from the covenants, restrictions or architectural standards which are provided in this Declaration. In any case, however, the dwelling or other improvement with such variances must, in the ACC'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 ACC has not expressly and in writing approved such request within thirty (30) days of the submission of such request. No member of the ACC shall be liable to any Owner for any claims, causes of action or damages arising out of the grant or denial 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 and the grant of a variance to any one Owner shall not constitute a waiver of the ACC's right to deny a variance to another Owner in similar circumstances. The decisions of the ACC with respect to variances shall be final and binding upon the applicant.

ARTICLE VI

EASEMENTS

Section 6.1. Utility Easements. As long as Class B membership shall be in effect, the Declarant hereby reserves the right to grant perpetual, nonexclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Common Area for ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, cable television, telephone, gas and electric systems. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. Upon cessation of Class B membership, the Association shall have the right to grant new easements described herein.

Section 6.2. Declarant's Easement to Correct Drainage. As long as Class B membership shall be in effect, Declarant hereby reserves for the benefit of Declarant a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant to correct or maintain any drainage facilities within the Property.

Section 6.3. Easement for Unintentional Encroachment. The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment.

Section 6.4. Entry Easement. In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, the Association shall have the right 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 Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

Section 6.5. Drainage Easements. Easements for installation and maintenance of utilities, stormwater retention/detention ponds, and/or a conservation area are reserved as may be shown on the recorded Plat. Within these easement areas, 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 which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 6.6. Temporary Completion Easement. All Lots shall be subject to an easement of ingress and egress for the benefit of the Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Property as may be expedient or necessary for the construction, servicing and completion of dwellings and landscaping upon Lots adjacent to the Property, provided that such easement shall terminate twelve (12) months after the date such Lot is conveyed to the Owner by the Declarant.

ARTICLE VII

USE AND OCCUPANCY

All Lots and dwellings shall be used and occupied for single family residence purposes only. No Lot or dwelling may be used for commercial, institutional or other non-residential purpose (including residential day care facilities) if such use involves the attendance or entry of non-residents upon the Lot for business purposes or otherwise diminishes the residential character of the Lot or neighborhood. This prohibition shall not apply to (i) "garage sales" conducted entirely on an Owner's Lot in accordance with guidelines (if any) established by the Association provided that no Owner shall conduct more than one (1) garage sale of no more than two (2) days duration during any six (6) month period, or (ii) the use of any Unit by Declarant and/or Builder as a model home or sales office, or (iii) the use of any Lot as a site for a selection center trailer, construction office trailer and/ or sales office trailer by Declarant.

ARTICLE VIII

PROPERTY RIGHTS

Section 8.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement in and to the Common Areas and a right and easement of ingress and egress to, from and through said Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association to establish and publish rules and regulations governing the use of the Common Areas affecting the welfare of Association members.

b. The right of the Association to suspend the right of use of the Common Areas and the voting rights of an Owner for any period during which any assessment against such Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

c. The right of the Association, subject to the provisions hereof, to dedicate or transfer all or any part of the Common Areas, if any, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument signed by Owners entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded agreeing to such dedication or transfer, excluding Declarant.

d. The right of the Association, subject to the provisions hereof, to mortgage all or any part of the Common Areas. The Common Areas cannot be mortgaged without consent of two-thirds (2/3) of the votes of each class of membership, excluding Declarant.

e. All easements herein described are easements appurtenant to and running with the land; they shall at all times inure to the benefit of and be binding upon the undersigned, all of their grantees, and their respective heirs, successors, personal representatives and assigns, perpetually and in full force.

Section 8.2. Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the easements, restrictions and covenants herein described or to this Declaration shall be sufficient to create and reserve such easements and covenants to the respective grantees, mortgagees, or trustees of said parcels as fully and completely as if those easements, restrictions and covenants were fully related and set forth in their entirety in said documents.

Section 8.3. Rezoning Prohibited. No Lot shall be rezoned to any classification allowing commercial, institutional or other non-residential use without the express consent of the Association and Declarant, which may be withheld in Declarant's sole discretion. Declarant or the Association may enforce this covenant by obtaining an injunction against any unapproved rezoning at the expense of the enjoined party.

Section 8.4. Lot Consolidation. Declarant may divide any Lot and/or consolidate any adjoining Lots and/or any portion thereof. The Lot or Lots resulting from such division and/or consolidation shall bear,

and the Owner(s) thereof shall be responsible for, all assessments theretofore applicable to the Lots which are divided and/or consolidated; provided, however, if a Lot is split and not completely consolidated into another Lot, then the assessment amount shall be prorated on a square footage basis. Each such building site shall meet all lawful requirements of any applicable statute, ordinance or regulation.

Section 8.5. Drainage Alteration Prohibited. The surface water drainage contours of each Lot shall conform to the approved grading plan established by the Declarant or any Builder. No Owner shall fill or alter any drainage swale established by the Declarant or any Builder, nor shall any Owner install landscaping or other improvements that divert surface water runoff from the drainage patterns, swales and easements established by the Declarant or any Builder.

ARTICLE IX

USE RESTRICTIONS

Section 9.1. 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.

Section 9.2. Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns, including any Builder, shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of single-family dwelling units on the Property.

Section 9.3. Temporary Structures. No structure of a temporary character, including, without limiting the generality thereof, any trailer, tent, shack, garage, barn, motor home or mobile home or other outbuilding, and no prefabricated or relocated structure shall be used on any Lot at any time as a residence, either temporarily or permanently. This restriction shall not be interpreted to limit the right of Declarant or any Builder to use trailers or outbuildings as sales offices, selection center offices, construction offices or material storage facilities.

Section 9.4. Signs. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Unit, fence or other improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the subdivision or carried by any person or by any other means displayed within the subdivision except the following:

- a. **For Sale Signs.** An Owner may erect one (1) sign not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the Owner's Lot for sale.
- b. **Declarant's Signs.** Signs or billboards may be erected by the Declarant and any Builder.
- c. **Political Signs.** 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 ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election.

d. **School and Business Logos.** Emblems or bumper stickers advertising a resident's school or business mounted upon vehicles parked or driven in the subdivision.

e. **Other Signs.** Any sign or signs submitted to and approved by the ACC.

Section 9.5. Campers, Boats and Recreational Vehicles. No campers, boats, boat trailers, marine craft, golf carts, travel trailers, motor homes, camper bodies, recreational vehicles and other types of recreational and non-passenger vehicles, equipment, implements or accessories may be kept on any Lot for more than 24 hours to facilitate loading, unloading or cleaning, unless the same are fully enclosed within the garage located on such Lot and/or said vehicles and accessories are screened from view by a screening structure or fencing approved by the ACC, and said vehicles and accessories are in an operable condition. 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 dismantling or assembling of motor vehicles, boats, trailers, recreational vehicles, or other machinery or equipment shall be permitted in any driveway or yard adjacent to a street. No commercial vehicle shall be parked on any street or Lot except within an enclosed structure or a screened area which prevents such view thereof from adjacent Lots and streets, unless such vehicle is temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity. No trucks or vehicles of any size which transport inflammatory or explosive cargo may be kept on the Property at any time. No abandoned, derelict or inoperable vehicles may be stored or located on any Lot. Notwithstanding the above, a resident may park a vehicle bearing commercial insignia on a street right-of-way or Lot if such vehicle is used in the course of resident's business.

Section 9.6. Pets, Livestock and Poultry. No animals, livestock or poultry of any kind 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, bred, or maintained for any commercial purpose; and provided further, that no more than four (4) adult animals may be kept on a single Lot. 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. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the ACC, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

Section 9.7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. 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.

Section 9.8. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street Property lines and a

line connecting them at points twenty-five (25) feet from the intersection of the street Property lines, or in the case of a rounded Property corner, from the intersection of the street Property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street Property line with the edge of a driveway or alley pavement. 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.

Section 9.9. Parking and Traffic Regulations. No vehicles, trailers, implements or apparatus may be driven or parked in the Common Maintenance Areas or on any easement unless in use for maintaining such Common Maintenance Areas, provided however, that this restriction shall not apply to driveways, streets or paved areas intended for vehicular use. Notwithstanding the above, on-street parking is subject to regulations established by the Board of Directors. The Board of Directors shall have the right to enact regulations and erect signs to regulate automobile traffic within the subdivision. The Board of Directors shall promulgate all regulations so enacted to all members. The Board of Directors may enforce regulations so adopted pursuant to this Section 9.9, or pursuant to any authority given the Board of Directors by the Bylaws through any of the following means: (a) suspension of privileges of membership; (b) causing any offending vehicle parked in violation of regulations and within a street to be towed at the owner's expense; (c) a fine, imposed only after notice and opportunity for a hearing, which fine shall be a continuing lien upon the Lot of the Owner against whom such fine shall be assessed; or (d) in such other manner as may be permitted, or not prohibited by the Bylaws.

Section 9.10. Commercial or Institutional Use. No Lot, and no building erected or maintained on any Lot shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes, except as set forth in Article VII.

Section 9.11. Detached Buildings. No detached accessory buildings, including, but not limited to, detached garages and storage buildings, shall be erected, placed or constructed upon any Lot without the prior consent of the ACC. Every outbuilding, inclusive of such structures as a storage building, greenhouse or children's playhouse shall be compatible with the dwelling to which it is appurtenant in terms of its design and material composition. Exterior paint and roofing materials of such outbuildings shall be consistent with the existing paint and roofing materials of the dwelling. Outbuildings shall be of a one (1) story design and not exceed nine (9) feet in height measured from existing grade or have total floor area in excess of ten percent (10%) of the floor area of the main dwelling.

Section 9.12. Fences. No fence, wall or hedge shall be erected or maintained on any Lot nearer to the street than the building setback lines for the front and side yards, except for fences erected in conjunction with model homes or sales offices. All fences shall be constructed of wood or masonry except for retaining walls installed by Declarant or retaining walls or decorative walls approved by the ACC. All side and rear Property lines must be fenced. All fences shall be six (6) feet in height. No chain-link, metal cloth or agricultural fences may be built or maintained on any Lot. Unless otherwise agreed between Owners, side and rear yard fences that separate adjacent Lots shall be owned and maintained, repaired and/or replaced by the Owner on whose Lot the fence exists, or if the location is indefinite, such fence will be maintained, repaired and/or replaced by the Owners whose Lots are involved jointly with expenses being shared equally except that certain portion of the fence designated on Exhibit "B" attached hereto as the front boundary fence shall be maintained, repaired and/or replaced by the Association. Notwithstanding the foregoing, the ACC shall have the right and authority to approve variances of fencing height, material and/or location for reasonable cause or to alleviate hardship as determined in the sole judgment of the ACC; provided however,

the ACC may not approve a variance which contradicts the zoning and/or subdivision ordinances of the City unless the City has previously approved the variance.

Section 9.13. Landscaping and Exterior Maintenance. Decorative ground cover rock in the front and side yard may not exceed ten (10) percent of the total area of the front and side yard. Growth of grasses in lawns must be properly maintained not to exceed six (6) inches in height. All landscaping located on any Lot shall be properly maintained at all times by the Lot Owner. Each Lot Owner shall keep all shrubs, trees, grass, and plantings of every kind on his or her Lot cultivated, pruned, free of trash, and other unsightly material. Xeriscaping may be used provided, however, that it is consistent and compatible with landscaping and xeriscaping within the subdivision and has prior approval of the ACC. Each Owner shall, at such Owner's sole cost and expense, maintain, repair and replace, as the case may be, (i) all glass surfaces on such Owner's Unit, (ii) exterior doors, (iii) any damage resulting from fire, wind, flood, tornado, hurricane or other casualty damage within the Lot of such Owner, (iv) any property whether upon such Owner's Lot or any other Lot, or the Common Areas, which is required because of any gross negligence or willful act of such Owner or any member of such Owner's family or household, or any invitee of such Owner, (v) the roof on the Owner's Unit, (vi) walkways and driveways, and (vii) the exterior building services (including painting, siding, and downspouts). Declarant, the Association, and the ACC shall have the right at any reasonable time to enter upon any Lot to replace, maintain, and cultivate shrubs, trees, grass, or other plantings as deemed necessary; and to paint, repair, or otherwise maintain any improvements in need thereof, if any Owner fails to comply with this Declaration within twenty (20) days after delivery of written notice to such Owner detailing any items which are not in compliance with this Declaration. The Declarant, Association and/or ACC may charge the cost thereof to the Lot Owner and if same is not paid within thirty (30) days after written notice thereof, said charge shall be an assessment against said Owner's Lot, which shall be secured by the lien described in Section 2.6.

Section 9.14. Antennae, Satellite Dishes and Solar Collectors. No Owner may erect or maintain a television or radio receiving or transmitting antenna (including citizen band radio), satellite dish or similar implement or apparatus which is larger than one (1) meter, television aerial wires or solar collector panels or equipment upon any Lot unless such apparatus is erected and maintained in such a way that it is screened from public view along the public street right-of-way directly in front (and side, in the case of a corner Lot) of the house erected on such Lot; and no such apparatus shall be erected without the prior written consent of the ACC. The ACC, as designated in this Declaration, shall have the absolute authority to determine whether an accessory is adequately screened from public view.

Section 9.15. Exterior Finish. All exterior walls of all dwellings, garages and approved accessory buildings shall be completely finished with wood, stucco, brick, stone, lap siding paneling or other material acceptable to the ACC. No unpainted concrete block surfaces shall be visible on any exterior wall. The first floor exterior walls of the main residence building constructed on any Lot shall be composed of at least twenty-five percent (25%) masonry or masonry veneer, said percentage to apply to the aggregate area of all first floor exterior walls, including windows, doors or other openings and gable ends. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock, cement siding and all other materials commonly referred to in the Bexar County, Texas area 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.

Section 9.16. Chimneys. All fireplace flues, smoke stacks and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the principal finish material of the exterior walls of the dwelling or otherwise approved by the ACC.

Section 9.17. Clothes Hanging Devices. Clothes hanging devices exterior to a dwelling shall not exceed five (5) feet in height and shall not be placed nearer to any street abutting the Lot than the side yard setback line or the back of the Unit constructed on the Lot. Clothes hanging devices shall be screened from public view by a fence approved by the ACC.

Section 9.18. Window Treatment. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 9.19. Limitation on Square Feet. The minimum square footage area of Units erected on the Lots, exclusive of open porches and/or garages, shall be not less than one thousand (1,000) square feet.

Section 9.20. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operation 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 any Lot. No tank for the storage of oil or other fluids may be maintained on any of the Lots above the surface of the ground.

Section 9.21. Mail Boxes. Mail boxes shall be erected and maintained upon areas determined by the U.S. Postal Service in accordance with the current postal authority standards and the approval of the ACC.

Section 9.22. Garages and Driveways. An enclosed garage able to accommodate at least one (1) automobile must be constructed and maintained for each residence. No detached garages or temporary buildings will be permitted on any Lot. The openings of such garages must be situated within the setback lines set out in **Section 9.24.** below. Garages may be used as a builder's sales offices prior to permanent occupancy of the main structure, however, sales offices must be converted to garages prior to permanent occupancy. With the exception of periods when garages are used by the Declarant as sales offices, all garages shall be maintained for the storage of automobiles, and no garage may be enclosed or otherwise used for habitation.

Section 9.23. Roof. No exposed roof surfaces on any principal and/or secondary structures shall be of wood shingles or wood shakes unless rated by the State Insurance Board as meeting fire retardant standards. The ACC shall have the authority to approve roof treatments and materials when in its determination such treatments and materials, in the form utilized will not be a detriment to the quality of the neighborhood.

Section 9.24. Setback Lines. All buildings or other structures (except fences), permanent or temporary, habitable or uninhabitable, must be constructed, placed and maintained in conformity with setback lines imposed herein. In no event shall any such building or other structure be constructed, placed or maintained within ten feet (10') of the rear Property line of a Lot or within five feet (5') of the side Property line. Front setback lines are hereby established at twenty feet (20') for all buildings, excluding garages which shall not be constructed or placed within twenty-four (24') feet of the front property line. The eaves, steps and porches of buildings shall not be deemed to be a part of a building or structure for the

purpose of this covenant. Notwithstanding the foregoing, the ACC shall have the right and authority to approve variances from the setback requirements for reasonable cause or to alleviate a hardship; provided however, the ACC may not approve a variance which contradicts the setback requirements of the zoning and/or subdivision ordinances of the City unless the City has previously approved the variance.

Section 9.25. Athletic and Recreational Facilities. Outdoor athletic and recreational facilities such as basketball goals, playscapes, swing sets and sport courts of a permanent nature shall not be placed on any Lot in the subdivision between the street right-of-way and the front of a Unit and must be approved by the ACC pursuant to Article V. Tennis court lighting and fencing shall be allowed only with the approval of the ACC. Temporary facilities may be placed, utilized and removed from view from the street during the course of a day.

Section 9.26. Security. Neighborhood watchman patrols may be provided by independent contractors through the Association, from time to time; however the Association is not responsible for security of the neighborhood or any Unit and the Owners are exclusively responsible for security for home and Property.

Section 9.27. Water and Sewage Systems. No individual water supply system or sewage disposal system shall be permitted on any Lot, including but not limited to water wells, cesspools or septic tanks.

Section 9.28. Exterior Holiday Decorations. Lights or decorations may be erected on the exterior of Units in commemoration or celebration of publicly observed holidays provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners by illuminating bedrooms, creating noise or attracting sight-seers. All lights and decorations that are not permanent fixtures of the Unit which are part of the original construction or have been properly approved as permanent improvements by the ACC shall be removed within thirty (30) days after the holiday has ended. Christmas decorations or lights may not be displayed prior to November 1st of any year. For other holidays, decorations or lights may not be displayed more than three (3) weeks in advance of the holiday. The Association shall have the right, upon thirty (30) days prior written notice to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Association, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion or damages of any kind except intentional misdeeds and gross negligence.

Section 9.29. Construction Activities. This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction or remodeling of or making of additions to improvements by a Lot Owner (including Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the ACC in its sole good faith judgment, the ACC shall have the authority to obtain an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind offensive, or detrimental to it or any other portion of the Property, then the ACC may contract for or cause such debris to be removed, and the Lot Owner shall be liable for all expenses incurred in connection therewith.

Section 9.30. Front Exterior Decoration or Ornamentation. Exterior decoration or ornamentation, including, but not limited to any form of statuary (such as birds) or flagpoles shall not be permitted on any Lot without the approval of the ACC.

Section 9.31. Subdivision Access. Access to the subdivision will be via a controlled entry gate. The subdivision entry gate, when constructed, shall be kept open up to seven (7) days a week to the public during daylight hours (or from 6:30 a.m. to 7:00 p.m., whichever is longer) until either the longer of, (a) six (6) months following the conveyance of the last Lot owned by Declarant, or (b) the construction and sale of all Units has been completed within the subdivision and any future phase of development annexed to the jurisdiction of the Association. This right of entry is to ensure access to Lots by prospective new home purchasers and contractors to complete construction of homes. After said date the Board may alter said hours that the gate will be open or with Declarant's written consent the Board may alter the hours prior to said date. In no event shall the existence of controlled access into the subdivisions be deemed as a warranty or representation by the Declarant or the Association that acts of vandalism or other criminal activity will not occur from time to time.

Section 9.32. Streets. Streets within the subdivision shall be private and shall be owned and maintained by the Association. Declarant and/or its contractor warrants the construction of the streets against defective workmanship for a period of one (1) year from completion of the street as verified by an engineer employed by Declarant; provided, however, maintenance beyond said one (1) year period is the responsibility of the Association.

a. In purchasing a Lot, the Owner specifically assumes the risk for himself, his family, employees, guests, contractors and all other invitees of damages or injuries relating to or arising from the streets.

b. The Board of Directors may make reasonable rules and regulations relating to the use of the streets, and may prescribe such penalties, as it determines reasonable and necessary to promote safety within the Property. In the event an Owner or Owner's family member or guest repeatedly violates such rules or fails to operate a motorized vehicle at or below the posted maximum rate of speed and in a safe, reasonable and prudent manner on the private streets within the subdivision, such person may be subject to such penalties, including, but not limited to the following: (1) fines; and/or (2) the suspension of such person's right to traverse the private streets within the subdivision via motorized vehicle for a period not to exceed 30 days.

c. The Board of Directors may make such other and further rules regarding notification of safety infractions and/or enforcement of the penalties as may be reasonably necessary to give effect to this Section 9.32.

d. In the event speed and traffic control in the subdivision are assumed by the City or by some other public agency having the authority to issue penalties for infractions thereof, the penalties prescribed herein may not be imposed in addition to the penalties imposed by said public entity, but said penalties described herein may be imposed by the Association or the Board if said other entity does not impose any penalty.

Section 9.33. Exterior Lighting. Exterior light fixtures shall be provided at the front of each residence; provided, however, that no light fixture or lantern of any type shall be placed in the front yard or

in the back yard if same is visible from any street or Unit, until the same has been approved by the Board. 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 lighting is permitted with the approval of the ACC.)

ARTICLE X

[RESERVED]

ARTICLE XI

ANNEXATION

Section 11.1. Annexation by Declarant. At any time during the initial term of this Declaration, the Declarant may, at its sole option, annex additional property into the Association to be subject to the terms hereof to the same extent as if originally included herein and subject to such other terms, covenants, conditions, easements and restrictions as may be imposed thereon by Declarant.

- a. **Eligible Property.** All or any portion of the properties described in Exhibit "C" attached hereto and incorporated herein by this reference.
- b. **Consent or Joinder Not Required.** No consent or joinder of any Class A member or other party except the record owner of the land being annexed shall be necessary to effect any annexation made pursuant to this Section.
- c. **Declaration of Annexation.** Annexation shall be evidenced by a written Declaration of Annexation executed by Declarant setting forth the legal description of the property being annexed and the restrictive covenants to be applied to such annexed property.
- d. **FHA/VA Approval.** Declarant shall submit a written request for approval of any annexation under this Section to the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") accompanied by a copy of the Declaration of Annexation. If neither FHA nor VA notifies Declarant of objections to the annexation within fifteen (15) days of the date of Declarant's request for approval, such approval shall be deemed to have been granted.

Section 11.2. Annexation by Action of Members. At any time the Board of Directors may request approval of the membership for the annexation of additional property into the Association to be subject to all of the terms of this Declaration to the same extent as if originally included herein. No such annexation shall be effective unless approved in writing by members entitled to cast two-thirds (2/3) of the votes in each class of membership, and by FHA and VA as set forth in Subsection 11.1(d) above. Any property that is contiguous to existing Property subject to this Declaration may be annexed hereto according to the foregoing requirements, provided however, that no such annexation shall be effective without the consent and joinder of the owners of the property to be annexed. Such annexation must be evidenced by a Declaration of Annexation as set forth in Subsection 11.1(c) above executed by the parties herein described.

Section 11.3. No Duty to Annex. Nothing herein contained shall establish any duty or obligation on the part of the Declarant or any member to annex any property into the Association and no owner of property excluded from the Association shall have any right to have such property annexed thereto.

Section 11.4. Effect of Annexation on Class B Membership. In determining the number of Lots owned by Declarant for purposes of Class B Membership status according to Section 2.7, the total number of Lots covered by the Association including all Lots annexed thereto shall be considered. If Class B Membership has previously lapsed but annexation of additional Property restores the ratio of Lots owned by Declarant to the number required for Class B Membership, such Class B Membership shall be reinstated until it expires pursuant to the terms of Section 2.7.

Notwithstanding any other provisions herein contained to the contrary, Declarant reserves the right, in its sole discretion to modify in whole or in part, the use restrictions set forth in Article IX hereof that will affect and govern any additional property annexed into the scope and purview hereof by Declarant in accordance with the provisions of this Article XI. In such event, the Declaration of Annexation affecting such additional annexed property shall contain any such modified use restrictions.

ARTICLE XII

GENERAL

Section 12.1. Remedies. In the event of any default by any Owner under the provisions of the Declaration, Bylaws or rules and regulations of the Association, the Association and any Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Bylaws and said rules and regulations, and those which may be available at law or in equity, and may prosecute any action or other proceedings against such defaulting Owner and/or others for enforcement of any lien, statutory or otherwise, including foreclosure of such lien and the appointment of a receiver for the Lot and ownership interest of such Owner, or for damages or injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief. No remedies herein provided or available at law or in equity shall be deemed mutually exclusive of any other such remedy. All expenses of the Association in connection with any such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the maximum rate permitted by law but, with reference to any Lots financed by FHA insured loans, not in excess of the maximum rate of FHA loans at the time of delinquency, from the due date until paid, shall be charged to and assessed against such defaulting Owner, and shall be added to and deemed part of his respective maintenance assessment (to the same extent as the lien provided herein for unpaid assessments), upon the Lot and upon all of his additions and improvements thereto, and upon all of his personal property upon the Lot. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or any Owner.

Section 12.2. Term and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless seventy-five percent (75%) of the votes outstanding shall have voted to terminate the covenants and restrictions of this Declaration upon the expiration of the initial thirty (30) year period or any extension thereof, which termination shall be by written instrument signed by seventy-five percent (75%) of the Owners and properly recorded in Bexar County, Texas. This Declaration may be amended during the first thirty (30)

year period by an instrument signed by not less than ninety percent (90%) of the Owners. Any amendment must be recorded. Notwithstanding any provisions hereof to the contrary, the Declarant may, at its sole discretion and without consent being required of anyone, modify, amend, or repeal this Declaration at any time prior to the closing of the sale of the first Lot, provided said amendment, modification, or repeal is in writing and properly recorded in Bexar County, Texas. Declarant further reserves, (i) prior to the closing of the sales of all of the Property, all rights which may be necessary to deal with the Property, including the right to vacate, amend, or modify the plat of subdivision, and (ii) the right at any time to amend this Declaration in order to correct scrivener's errors. Amendments shall be subject to prior approval by FHA and VA if any Lot within the Property is encumbered by an FHA or VA mortgage loan.

Section 12.3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain, in full force and effect.

Section 12.4. Rights and Obligations. The provisions of this Declaration and the Articles of Incorporation and Bylaws and the rights and obligations established thereby shall be deemed to be covenants running with the land and shall inure to the benefit of, and be binding upon, each and all of the Owners and their respective heirs, representatives, successors, assigns, purchasers, grantees and mortgagees. By the recording or the acceptance of a deed conveying a Lot or any ownership interest in the Lot whatsoever, the person to whom such Lot or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all of the provisions of this Declaration and the Articles of Incorporation and Bylaws, whether or not mention thereof is made in said deed.

Section 12.5. FHA/VA Provision. If any prospective Owner applies for FHA or VA mortgage financing and receives a commitment therefor, the following actions will require approval of the Federal Housing Administration and the Veterans Administration as applicable: (1) mortgaging or dedication of Common Areas, (2) amendment of this Declaration or the Articles of Incorporation or Bylaws of the Association, and (3) dissolution of the Association.

Section 12.6. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 12.7. Conflicts. 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.

Section 12.8. Partial Invalidity. The invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 12.9. Pronouns/Singular vs. Plurals. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

Section 12.10. Declarant Rights. If Centex Homes assigns any of its Declarant rights herein, unless such assignment is a complete and full assignment, Centex Homes' Declarant rights shall govern and control over such assignee's Declarant rights to the extent there is a conflict and Centex Homes shall have the sole and exclusive right to veto and/or control the exercise of the Declarant's rights.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on its behalf, attested and its corporate seal to be hereunto affixed as of this 2nd day of July, 2001.

DECLARANT
CENTEX HOMES
a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation
Its: managing general partner

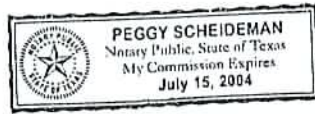
By: Damon Lyles
Damon Lyles,
Division President

STATE OF TEXAS

§
§
§

COUNTY OF BEXAR

The foregoing instrument was acknowledged before me this 2nd day of July, 2001, by Damon Lyles, Division President of Centex Real Estate Corporation, a Nevada corporation, the managing general partner of Centex Homes, a Nevada general partnership on behalf of said partnership.



Peggy Scheideman
Notary Public, State of Texas
Notary's Name Printed:
Peggy Scheideman
My Commission Expires: 7-15-2004

AFTER RECORDING RETURN TO:
The Heights of Carriage Hills Homeowners Association
c/o Centex Homes
16414 N. San Pedro #700
San Antonio, TX 78232
Attn: Rick Pierce

Y01.8989 PG 2328

EXHIBIT "A"

PROPERTY SUBJECT TO DECLARATION

Lots 1 through 38 and Lots 143 through 160
of Block 25 NCB 17293 in Carriage Hills,
Unit 1A, according to the plat thereof
recorded in Volume 9551, pages 102 and 103
of the Deed and Plat Records of Real Property
of Bexar County, Texas.

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EXHIBIT "B"

FENCING

Lot 151	Block 25	NCB 17293
Lot 152	Block 25	NCB 17293
Lot 153	Block 25	NCB 17293
Lot 156	Block 25	NCB 17293
Lot 157	Block 25	NCB 17293
Lot 158	Block 25	NCB 17293
Lot 6	Block 25	NCB 17293
Lot 7	Block 25	NCB 17293
Lot 8	Block 25	NCB 17293
Lot 9	Block 25	NCB 17293
Lot 10	Block 25	NCB 17293

EXHIBIT "C"

ELIGIBLE PROPERTY

Please see attached.

EXHIBIT "C"
Carriage Hills PUD/POADF
POADF No. 673A; PUD No. 00-021-A

