

Hidalgo County
Eddy Trevino
County Clerk
Edinburg, TX 78540



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**STATE OF TEXAS
COUNTY OF HIDALGO**

I hereby certify that this instrument was FILED in the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas

Eddy Trevino
County Clerk
Hidalgo County, TX

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BENTSEN PALM DEVELOPMENT

1674119

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 10 day of October, 2006, by RHODES ENTERPRISES, INC. a Texas Corporation ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Declarant has established this Declaration to provide a governance structure and a system of standards and procedures for the overall development, administration, maintenance, and preservation of the Bentsen Palm Development (as defined below) as a master planned community.

Article I Creation of the Community.

1.1. Purpose and Intent.

Declarant intends by Recording this Declaration to create a general plan of development for a planned community to be located on the Eligible Property and to be known as the Bentsen Palm Development. All of the Eligible Property may, at the Declarant's discretion and in accordance with the procedures set forth herein, be part of the Bentsen Palm Development. The purpose of this Declaration is to provide a reasonable procedure for the future expansion of the Bentsen Palm Development to include additional real property within the Eligible Property as Declarant deems appropriate and to provide for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the Bentsen Palm Development. An integral part of the development plan is the creation of the Bentsen Palm Development Association, Inc., an association comprised of all owners of real property in the Bentsen Palm Development, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration. This document does not and is not intended to create a condominium within the meaning of the Texas Condominium Act, Tex. Prop. Code Ann., Section 81.001, et seq. (Vernon 1984).

1.2. Binding Effect and Term.

Until such time as the Declarant Records (as defined below) a Supplemental Declaration stating that no further Neighborhoods shall be designated within the Bentsen Palm Development (the "Closing Supplemental Declaration"), all of the Eligible Property shall be owned, conveyed, used, and otherwise encumbered subject to all of the provisions of this Declaration, which shall run with the title to such property. Upon the filing of the Closing Supplemental Declaration, any part of the Eligible Property that has not been added to a Neighborhood (as defined below), Open Space Habitat (as defined below) or as Common Area (as defined below) of the Bentsen Palm Development by including such Eligible Property either on Exhibit A attached hereto or in a Supplemental Declaration, shall be released from this Declaration. All Eligible Property, except any such property excluded from Bentsen Palm Development by the Closing Supplemental Declaration or by a Recorded document filed by Declarant prior to the Closing Supplemental Declaration, shall be owned, conveyed, used, and otherwise encumbered subject to all of the provisions of this Declaration, including the covenants, conditions, restrictions and development standards contained herein, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Bentsen Palm Development, their heirs, successors, successors-in-title, and assigns. This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns from the Recording of this Declaration through December 31, 2036. Thereafter, this Declaration, and the covenants, conditions, restrictions and development standards set forth herein shall extend automatically and continue in full force and effect for successive 10-year periods unless a majority of the then Owners sign and Record, within the year preceding any extension, an instrument

which terminates this Declaration. If any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement. If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

1.3. Governing Documents.

The Governing Documents may be supplemented by additional covenants, restrictions, and easements applicable to particular Neighborhoods within the Bentsen Palm Development. Nothing in this Section shall preclude the Recording of a Supplemental Declaration or other instrument applicable to any portion of the Bentsen Palm Development (with the consent of the Owner of such property) which contains additional restrictions or more restrictive provisions; provided, any such Recording is subject to Section 10.4. The Governing Documents shall apply to Owners as well as occupants of Lots and their respective tenants, guests, and invitees. Any lease of a Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of the Governing Documents. In the event of a conflict between Texas law, the Certificate of Formation, the Declaration, and the By-Laws, the provisions of Texas law, the Declaration, the Certificate of Formation, and the By-Laws (in that order) shall prevail. In the event of a conflict between or among the Governing Documents and any additional covenants or restrictions, and/or the provisions of any other certificate of formation, by-laws, rules, or policies governing any Neighborhood, the Governing Documents shall control.

Article II Definitions

The terms used in the Governing Documents shall be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. "Architectural Review Committee" or "ARC": The committee established by the Board to review plans and applications for the modification of improvements within the Bentsen Palm Development (subject to the rights reserved to Declarant in Section 4.2(a)) and to administer and enforce the architectural controls described in Article IV.

2.2. "Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

2.3 "Assessment". A Base Assessment, Neighborhood Assessment, Special Assessment, Specific Assessment or New Member Assessment.

2.4. "Association": The Bentsen Palm Development Association, Inc., a Texas nonprofit corporation, its successors or assigns.

2.5. "Base Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots, as determined in accordance with Section 8.1.

2.6. "Bentsen Palm Development": The Eligible Property until such time as the Closing Supplemental Declaration is Recorded, upon which time it shall be limited to the real property described in Exhibit "A," together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.7. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws.

2.8. "Builder": Any Person who purchases five or more Lots for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Bentsen Palm Development for further subdivision, development, or resale in the ordinary course of such Person's business.

2.9. "By-Laws": The By-Laws of the Bentsen Palm Development Association, Inc., as amended from time to time.

2.10. "Certificate of Formation" or "Certificate": The Certificate of Formation of the Bentsen Palm Development Association, Inc., as filed with the Texas Secretary of State.

2.11. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board. The Class "B" Control Period shall expire upon the first to occur of the following: (a) both (i) the Closing Supplemental Declaration has been Recorded and (ii) 90% of the Lots approved for development under the Master Plan have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders or Declarant; (b) December 31, 2026; or (c) when, in its discretion, the Class "B" Member so determines.

2.12. "Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners or for the Owners in a particular Neighborhood. The term shall include the Exclusive Common Area, as defined below.

2.13. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs.

2.14. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing within the Bentsen Palm Development. Minimum standards may be established through the Design Guidelines, Use Restrictions, and Board resolutions, and shall initially be established by Declarant. The Community-Wide Standard may contain both objective and subjective elements and may evolve as development progresses and as the needs and desires within the Bentsen Palm Development change.

2.15. "Declarant": Rhodes Enterprises, Inc., a Texas corporation or any successor or assign who takes title to any portion of the property described in the Mission Ordinance for the purpose of development and/or sale, and who is expressly designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

2.16. "Design Guidelines": The architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures adopted pursuant to Article IV and applicable to the Bentsen Palm Development. The initial Design Guidelines for the Bentsen Palm Development shall be those Design Guidelines prepared by and available from Declarant.

2.17. "Eligible Property": The portion of the real property owned by Declarant and described in the Mission Ordinance, and more particularly described on the attached Exhibit A.

2.18. "Exclusive Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in Article XII.

2.19. "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declarations, the By-Laws, the Certificate of Formation, the Use Restrictions, and the Design Guidelines, as each may be amended from time to time.

2.20. "Lot": A portion of the Bentsen Palm Development, whether improved or unimproved, which has been subdivided so that it may be independently owned and is intended for development, use, and occupancy as a residence for a single family, subdivision plat, which has been approved by the City of Mission, Texas and Recorded. The term shall refer to any land which is part of the Lot as well as any improvements thereon. Upon the Recording of a final plat, notwithstanding any previous preliminary plat covering the same property, Lots shall be determined based upon the final plat.

2.21. "Master Plan": The land use plan for the Bentsen Palm Development prepared by Rhodes Enterprises, Inc. as approved by the appropriate zoning authority, as it may be amended, which includes all of the property described in Exhibit "A." The initial Master Plan is described in the Mission Ordinance.

2.22. "Maximum Base Assessment": With respect to any Lot, the maximum Base Assessment that may be payable in a calendar year.

2.23. "Member": A Person who is a member in the Association pursuant to Section 6.2.

2.24. "Mission Ordinance": Ordinance number 2558 of the City of Mission, Texas (as amended from time to time, including by that certain ordinance number 3089 of the City of Mission, Texas, defining the Master Plan and the property to eligible to be subject to such plan for the Bentsen Palm Development.

2.25. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

2.26. "Neighborhood": A group of Lots designated as a separate Neighborhood under the Declaration. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. Where the context permits or requires, the term Neighborhood also shall refer to any Neighborhood Committee, if any within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

2.27. "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood to fund Neighborhood Expenses, as described in Section 8.2.

2.28. "Neighborhood Committee": An advisory committee to the Board, representing the interests of a particular Neighborhood and established, at the discretion of the Board, as set forth herein and pursuant to the By-laws. The Board may elect not to have Neighborhood Committees or to establish Neighborhood Committees only for less than all Neighborhoods.

2.29. "Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s). Neighborhood Expenses may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge.

2.30. "New Member Assessment": New Member Assessments levied against Lots upon certain transfers as described in Section 8.6.

2.31. "Open Space Habitat": That certain real property, and improvements and facilities thereon, located adjacent to or on the vicinity of the Bentsen Palm Development, which is owned by Persons other than the Association and is operated as an Open Space Habitat.

2.32. "Owner": One or more Persons holding record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

2.33. "Person": A natural person, a corporation, a partnership, a trustee, a limited liability company, or any other legal entity.

2.34. "Record," "Recording," or "Recorded": The filing of a legal instrument in the Public Real Estate Records of Hidalgo County, Texas, or such other place which is designated as the official location for recording deeds, plats, and similar documents affecting title to real estate.

2.35. "Released Parties": The parties specified in Section 7.12 below.

2.36. "Special Assessment": Assessments levied against all Owners or all Owners within a Neighborhood to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 8.4.

2.37. "Specific Assessment": An assessment levied against a particular Lot or Lots for expenses incurred or to be incurred by the Association in accordance with Section 8.5.

2.38. "Supplemental Declaration": A Recorded instrument which accomplishes one or more of the following purposes: (a) subjects additional property to this Declaration, (b) designates Neighborhoods, (c) imposes, expressly or by reference, additional covenants, conditions, restrictions and/or obligations on the land described or (d) with respect only to the Closing Supplemental Declaration, removes certain Eligible Property from this Declaration.

2.39. "Use Restrictions": The use restrictions and rules affecting the Bentsen Palm Development, as they may be adopted, modified, and repealed as set forth in Article III. The initial Use Restrictions are set forth in Exhibit "B."

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use, conduct, maintenance, and architecture at Bentsen Palm Development, including the Community-Wide Standard, give the community its identity and make the Bentsen Palm Development a place that people want to call "home." This Declaration establishes procedures for rulemaking as a dynamic process which allows the community standards to evolve as the Bentsen Palm Development changes and grows over time.

Article III Use and Conduct

3.1. Framework for Regulation. The Governing Documents establish, as part of the general plan of development for Bentsen Palm Development, a framework of affirmative and negative covenants, easements, and restrictions which govern the Bentsen Palm Development. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technologies which inevitably will affect the Bentsen Palm Development, its Owners and residents. This Article establishes procedures for adopting, amending, canceling, and otherwise modifying Use Restrictions, including the initial Use Restrictions set forth in Exhibit "B."

3.2. Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt, amend, cancel, or otherwise modify the Use Restrictions then in effect in accordance with the terms hereof. Except as specified *herein*, any such action may only be made if the notice requirement set forth in Section 3.2(e) are followed. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being made

effective by the Board. Such action shall become effective after compliance with subsection (c) below, unless disapproved

(i) at a meeting by Members representing at least 60% of the total Class "A" votes in the Association and by the Class "B" Member, if any; or

(ii) by the Class "B" Member, acting independently.

The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members being presented to the Board, the proposed action shall not become effective until after such meeting is held and then subject to the outcome of such meeting.

(b) Alternatively, at an Association meeting duly called for such purpose, the Members representing more than 50% of the total Class "A" votes in the Association may vote to adopt rules which amend, cancel, or otherwise modify Use Restrictions then in effect. Such action shall require the approval of the Class "B" Member, if any, acting in its sole and absolute discretion.

(c) Prior to any action taken under subsections (a) or (b) of this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Use Restrictions to each Owner. The effective date shall be at least 20 days following distribution to the Owners. The Association shall provide, without cost, a copy of the Use Restrictions then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal, or expand the Design Guidelines or other provisions of this Declaration. The Design Guidelines may be amended only as provided in Article IV. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(e) Notice Requirement. The Board shall send notice by mail to all Owners of any proposed action under Section 3.2(a) above at least 30 days prior to the Board meeting at which Board approval of such action is to be considered. The Board may, in addition, post a notice in a prominent place within the Bentsen Palm Development established by the Board as the place at which it shall post such notices or send a copy of such notice by means of e-mail or other electronic or telephonic communication, but shall not be required to give notice in such manner regardless of any past practice with respect to such additional notice methods.

(f) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of rules and regulations governing use and operation of the Common Area which the Board may adopt pursuant to Section 7.1(c), unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but are not limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

3.3. Owners' Acknowledgment and Notice to Purchasers. All Owners are hereby given notice that use of their Lots and the Common Area is limited by the Use Restrictions and that the Use Restrictions may be amended, canceled, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot can be affected by the Use Restrictions, as they may change from time to time. All purchasers of Lots are on notice that changes may have been adopted by the Association and that such revised Use Restrictions may not have been Recorded. Copies of the current Use Restrictions may be obtained from the Association. All purchasers of property within the Eligible Property (unless such property was excluded from Bentsen Palm Development by the Closing Supplemental Declaration) are on notice that the property is subject to this Declaration, regardless of whether it has been included in a Neighborhood.

3.4. Protection of Owners and Others. Except as may be contained in this Declaration either initially or by amendment or in the initial Use Restrictions set forth in Exhibit "B," all Use Restrictions shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly; provided, the Use Restrictions may vary by Neighborhood.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling. No rules shall regulate the content of political signs; however, rules may regulate the time, place, and manner of posting such signs (including design criteria).

(c) **Activities Within Dwellings.** No rule shall interfere with legal activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(d) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Lots (except the right to change the amount of Assessments as provided in Article VIII) or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association, except as provided in Section 11.1. Nothing in this provision shall (i) prevent the Association from adopting generally applicable rules for use of Common Area or from denying use privileges to those who abuse the Common Area or violate the Governing Documents or (ii) affect the right to increase the amount of Assessments as provided in Article VIII.

(e) **Alienation.** No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners include in any lease notice of the binding nature of the Governing Documents, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(f) **Abriding Existing Rights of Current Owner.** No rule shall require an Owner to dispose of personal property that is in compliance with any applicable laws and was in or on a Lot prior to the adoption of such rule and which was in compliance with all rules previously in force. This exemption shall apply only for the duration of such Owner's ownership of the personal property on the Lot, and this right shall not run with title to any Lot.

(g) **Reasonable Rights To Develop.** No rule or action by the Association or Board shall impair, impede, interfere with, reduce, hinder, or delay the right of Declarant or any Builder to develop the Bentsen Palm Development. The limitations described in this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they do not limit amendments to this Declaration adopted in accordance with Article XVIII.

(h) **Household Composition.** No rule shall interfere with the freedom of Occupants of Dwelling Units to determine the composition of their households, within the limitations imposed by this Article, except that the Association shall have the power limit the total number of occupants permitted in each dwelling on a Lot on the basis of the size and facilities of the Lot and its fair share use of the Common Area, providing that such limits shall not be less restrictive than applicable city codes in establishing the total number of occupants.

3.5 Public Activities.

Each Owner, by acceptance of a deed to a Lot, acknowledges that Bentsen Palm Development shall include various public attractions and activities, and that public events may be held within Bentsen Palm Development.

Each Owner acknowledges that such events and activities may result in nuisances or hazards to persons and property on or in the vicinity of such events and activities. Each Owner covenants, on behalf of itself, its heirs, successors, tenants or guests that it shall assume all risks associated with its and their use and ownership of property in the Bentsen Palm Development, including but not limited to the risk of property damage or personal injury arising from or incidental to such activities and events. This provision shall not be deemed to grant any Owner or other Person the right to hold any such activities or events.

Article IV Architecture and Landscaping

4.1. General.

No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading, and other site work, exterior alteration or modification of existing improvements, and planting or removal of landscaping materials) (such activities being referred to in this Article as "Work") shall take place except in compliance with this Article and the Design Guidelines promulgated pursuant to Section 4.3. Notwithstanding the above, an Owner may remodel, paint, or redecorate the interior of structures on the Owner's Lot without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval hereunder. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. All dwellings constructed on any portion of the Bentsen Palm Development shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to Declarant or the Architectural Review Committee, as appropriate, in their sole discretion. All plans and specifications shall be subject to review as provided herein. This Article shall not apply to the activities of Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended without Declarant's written consent so long as Declarant owns any portion of the Bentsen Palm Development.

4.2. Architectural Review.

(a) New Construction. Until 100% of the Lots permitted by the Master Plan (or, in the event the Closing Supplemental Declaration has been filed, 100% of the Lots permitted by the Master Plan on Eligible Property not excluded from the Bentsen Palm Development by the Closing Supplemental Declaration) have been conveyed to Class "A" Members and a certificate of occupancy for a single-family residence has been issued by the appropriate governmental authority as to each such Lot, Declarant shall have exclusive and absolute authority to administer and enforce architectural controls and to review and act upon all applications for original construction within the Bentsen Palm Development. There shall be no surrender of this right prior to that time except in a written instrument executed and Recorded by Declarant. Declarant, acting in its sole discretion, may assign its rights hereunder in whole or in part, at any time, to another party.

(b) Architectural Review Committee; Modifications. Within one year of the date of Recording of this Declaration, the Board shall establish the ARC, which shall consist of at least three Persons. Members of the ARC shall be appointed and shall serve at the discretion of the Board; provided, however, as long as Declarant owns any property for development or sale within the Bentsen Palm Development, it shall be entitled to appoint one member of the ARC. The members of the ARC may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The ARC shall have jurisdiction over modifications, additions, or alterations made on or to existing structures and landscaping on a Lot. Declarant, in its sole discretion, also may assign to the ARC jurisdiction over original construction within the Bentsen Palm Development. The ARC shall have authority to promulgate standards and guidelines concerning the matters under its purview, which shall be consistent with the Design Guidelines and Community-Wide Standard, and shall be subject to appeal to the Board. Approval of plans and specifications by the ARC shall be based, among other reasonable criteria including aesthetic concerns deemed relevant by the ARC, on general adequacy of site dimensions, design, conformity and harmony of the exterior design with neighboring structures, relative location of improvements with neighboring structures, relation of finished grades and elevations to neighboring sites, compliance with applicable governmental requirements and conformity to both the specific and general intent of this Declaration, any Supplemental Declarations and Master Plan Guidelines, if any, and all rules and regulations duly promulgated by the Association. As long as

Declarant owns any property for development or sale within the Bentsen Palm Development, the ARC shall notify the Declarant of any action taken under this Article IV. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any action taken by the ARC; provided, Declarant's right to veto must be exercised within ten days of its receipt of notice of action taken by the ARC. The party applying for approval shall not be notified of the ARC's approval or disapproval until after Declarant's right to veto has been exercised or has expired. For purposes of this Article, "Reviewing Body" shall refer to either Declarant, the ARC, or such other party to whom Declarant has assigned its rights under this Article, as applicable under the circumstances.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant shall prepare Design Guidelines for the Bentsen Palm Development and each Neighborhood therein and shall have the authority to amend them as long as it owns any property for development or sale within the Bentsen Palm Development; provided, Declarant, in its sole discretion, may assign such right to the Board at an earlier time. Upon expiration of Declarant's right to amend, the Board shall have the authority to amend the Design Guidelines. The Design Guidelines may contain general provisions applicable to all of the Bentsen Palm Development, as well as specific provisions which vary from one Neighborhood or other portion of the Bentsen Palm Development to another depending upon location and unique characteristics. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or the Board, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Bentsen Palm Development, and all such Persons shall conduct their activities in accordance with such Design Guidelines. All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans are submitted to and approved by the Reviewing Body, unless the Reviewing Body has granted a variance in writing pursuant to Section 4.5. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final.

(b) Procedures. No Work shall commence on any Lot until an application for approval has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore, and other features of proposed construction, as applicable. The Reviewing Body may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may reasonably be required pursuant to the Design Guidelines. The Reviewing Body may permit a set of plans to be submitted for consideration and approval with respect to multiple Lots at one time. In reviewing each submission, the Reviewing Body may consider (but shall not be limited to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, architectural merit, and compliance with the general intent of the Design Guidelines and the general scheme of development for the Bentsen Palm Development. Decisions of the Reviewing Body may be based on purely aesthetic considerations. A schedule and procedures outlining the specified Plans to be submitted at specific times shall be established by the Reviewing Body and may be set forth in the Design Guidelines. The Reviewing Body shall, within 30 days after receipt of each required submission of Plans (provided that in the even the Reviewing Body has requested additional information from the applicant, that such time period shall run from the submission of the last of such information), advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of

(i) the approval of Plans, or

(ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections.

In the event the Reviewing Body fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Reviewing Body written notice of such failure to respond, stating that, unless the Reviewing Body responds within ten days of receipt of such notice, approval shall be deemed granted. In the event the applicant gives the Reviewing Body such written notice, and the Reviewing Body again fails to give the applicant written notice of either approval or disapproval of the Plans within ten days of the Reviewing Body's receipt of such notice, then the Plans shall be deemed approved by the Reviewing Body, provided, however, no Plans, whether expressly approved or deemed approved pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 4.5. Notice shall be deemed to have been given three business days after the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, via certified mail, return receipt requested. Personal delivery of such written notice also shall be sufficient and shall be deemed to have been given at the time of delivery. If Work on approved Plans does not commence within six months of the approval of the Plans, the approval shall expire and the applicant must resubmit the Plans for approval from the Reviewing body. All Work shall be completed within one year of commencement of construction unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Reviewing Body.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Reviewing Body and its members will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work within the scope of this Article until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right of the Reviewing Body to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewing Body may authorize variances from strict compliance with the Design Guidelines or any required procedures on a case by case basis:

(a) in narrow circumstances where the design meets the intent of the provision from which variance is sought and where granting the variance would enhance design innovation and excellence, or

(b) when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require.

No variance shall

(x) be effective unless in writing;

(y) be contrary to this Declaration, including the intent and purpose hereof; or

(z) estop the Reviewing Body from denying a variance in other circumstances.

The inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships for the purpose of obtaining a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Bentsen Palm Development; they do not create any duty to any Owner, Builder or other Person. Review and approval of any application pursuant to this Article are made on the basis of aesthetic considerations only, and the Reviewing Body shall not bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements; or (c) conformity of quality, value, size, or design among Lots. Except as may be expressly provided in a separate written agreement, Declarant, the Association, the Board, the ARC, and any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work, or for any defects in Plans revised or approved hereunder, or for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot or any withholding or denial of approval of Plans or any delay in acting upon submitted Plans. In all matters, the Board, the ARC, and any member thereof shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewing Body issue a Certificate of Architectural Compliance certifying that there are no known violations of this Article. The Association shall either grant or deny such request within 15 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had written notice as of the date of such certificate.

4.8. Fees; Assistance.

The Reviewing Body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

4.9. Enforcement.

Any Work performed in violation of this Article or the Design Guidelines shall be deemed nonconforming. Upon written request from Declarant, the ARC, or the Board, Owners shall, at their own cost and expense, cure such nonconforming condition or remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore as required, Declarant, the Association, or the designees of either shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after providing notice and an opportunity for the Owner to be heard as provided for in the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment; provided that in no event shall Declarant or the Association be obligated to so complete the work. In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

Article V
Maintenance and Repair

5.1. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility as more particularly described in Section 7.2.

5.2. Maintenance of Lots.

(a) Each Owner shall maintain such Owner's Lot, including all landscaping and improvements comprising the Lot, in a neat and attractive condition consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Committee pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

(b) The obligation to maintain a Lot shall include, but not be limited to, the obligation immediately to (i) repair or replace damaged fencing, including missing and leaning slats, (ii) place trash and debris into appropriate receptacles, (iii) maintain landscaping, and (iv) promptly repaint, as needed to comply with the Community-Wide Standard, dwellings and other improvements on the Lot.

(c) Each Owner shall take reasonable preventative measures against diseases or insects that may endanger trees or vegetation and shall provide for the treatment of such conditions immediately upon discovery. Owners shall follow any standards or procedures regarding such disease or insect control as adopted by the Board.

5.3. Maintenance of Neighborhood Property.

(a) Upon resolution of the Board or if so authorized or directed by the Supplemental Declaration pertaining to such Neighborhood, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, rights-of-way, and green-space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, private parks or open space within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association. The Board, in assigning responsibility for payment to Owners within a Neighborhood, shall treat all similarly situated Neighborhoods the same.

(b) The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood Committee or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this Section shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.4. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for such repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard. Repair and replacement may include improvement, if necessary to comply with applicable building codes or other regulations or if otherwise deemed appropriate, in the Board's reasonable discretion. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard for landscaping. The Owner shall pay any costs which are not covered by insurance proceeds. The requirements of this Section shall apply to any Neighborhood Committee to which the Association has granted under separate written agreement responsibility for such common property within the Neighborhood in the same manner as if the Neighborhood Committee were an Owner and the common property within the Neighborhood were a Lot. Additional Recorded covenants applicable to any Neighborhood may establish requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

5.5. Party Walls and Similar Structures.

(a) General Rules of Law To Apply. Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots, which serves and/or separates any two adjoining Lots, shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who is served by the structure may restore it. Any such restoration will not prejudice the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Disputes. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIII.

**PART THREE:
COMMUNITY GOVERNANCE AND ADMINISTRATION**

The success of Bentsen Palm Development is dependent upon the support and participation of every Owner in its governance and administration. The Declaration establishes the Association as the entity through which each Owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's Board of Directors, some decisions are reserved for the Association's membership — the Owners within the Bentsen Palm Development.

**Article VI
The Association and its Members**

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Texas law.

6.2. Membership.

Every Owner is a Member of the Association; provided, there is only one membership per Lot. If a Lot is owned by more than one Person, such co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in writing provided to the Secretary of the Association.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot.

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, in the manner specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. The Class "B" Member shall have the right to disapprove any action of the Board and/or committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) when, after the Closing Supplemental Declaration has been Recorded, 90% of the Lots approved for development under the Master Plan (or such portion thereof that comprises the final scope of the Bentsen Palm Development as specified in the Closing Supplemental Declaration if certain areas of Eligible Property have been removed) have been conveyed to Class "A" Members; or

(ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Lot, if any, which it owns.

(c) Election Districts. For the election of members of the Board, the Declarant may, prior to the end of the Class "B" Control Period, establish election districts, each of which shall be composed of one or more Neighborhoods. Each new Neighborhood added by Supplemental Declaration after the establishment of election districts shall be added by Declarant to an election district, Until the end of the Class "B" Control Period, the Declarant may amend the election districts in its discretion by notice to the Association. After the end of the Class B Control Period, the Board may amend the election districts by redistributing the Neighborhoods among the election districts, provided that no such redistribution of Neighborhoods shall result in an increase in the number of Lots in any election district that already contains more Lots than the aggregate number of Lots divided by the number of election districts without the approval of 67% of the Owners of Lots in each election district (prior to any such redistribution). The number of election districts shall be equal to the number of members of the Board to be elected by Class "A" members less two. The Class "A" Members in each election district shall elect one member of the Board in the manner set forth in the By-laws, with two additional members of the Board being elected by all Class "A" members in the manner set forth in the By-laws.

(d) Exercise of Voting Rights. Except as otherwise specified in this Declaration, the By-Laws shall govern the exercise of Member's voting rights including the setting of a record date for transfers of ownership of a Lot. In any situation where a Person is entitled vote, and there is more than one Owner of the Person's Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

(e) Consents. In lieu of calling a meeting, any vote required hereunder may be taken by written consent in accordance with the By-Laws, and any question for which the required number of Class "A" votes have consented in writing shall be deemed to be the vote of that percentage of Class "A" votes at a meeting, provided that at least as many votes have been so cast in writing as would have been required for a quorum at a meeting.

6.4. Neighborhoods.

(a) Neighborhoods.

(i) Establishment. Every Lot shall be located within a Neighborhood. Neighborhoods are designated on Exhibit "A" to this Declaration. New Neighborhoods located within the Eligible Property may be added by Supplemental Declaration and additional property may be added to existing Neighborhoods by Supplemental Declarations.

(ii) Neighborhood Covenants. The Lots within a particular Neighborhood may be subject to covenants in addition to those set forth in this Declaration.

(iii) Neighborhood Committees. The Board, in its discretion, may establish a Neighborhood Committee to represent the interests of a Neighborhood. Neighborhood Committees may be elected as provided for in the By-Laws, and are considered advisory committees of the Board.

(iv). Changes to Neighborhoods. So long as it owns any property in the Bentsen Palm Development for development or sale, Declarant may amend this Declaration or any Supplemental Declaration to create new Neighborhoods or re-designate Neighborhood boundaries; provided, however, without the consent of the Owners of a majority of Lots in each of the affected Neighborhoods, Declarant shall not combine two or more Neighborhoods, provided however that Declarant may add additional property to an existing Neighborhood without (for example, by adding a second phase to the Neighborhood) without any such consent.

(v) Neighborhood Services. The Owners within any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods or may request that the Association provide special services for the benefit of Lots in such Neighborhood. Upon the request of the Neighborhood Committee, if any, or upon the affirmative vote (whether at a meeting, by written consent, or a combination thereof) of Owners of a majority of the Lots within the Neighborhood, the Association may, in the Board's discretion, provide the requested services. The cost of services so requested by a Neighborhood and provided by the Association, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment.

(b) Voting. The presence, in person or by proxy or by written ballot, of Class "A" Members representing at least 25% of the total Class "A" votes attributable to Lots in the Neighborhood shall constitute a quorum at any Neighborhood meeting.

6.5 Notice. Unless otherwise specified herein, any notice required to be sent to the Members or Owners hereunder, shall be sent either (a) by United States Postal Service, postage prepaid or (b) in such other manner as allowed by the By-Laws. Such notice shall be sent to the address on file with the Association, it being the obligation of the person to keep and updated membership information and address on file with the Association. The Association may set rules for the date by which address and membership changes must be received in order to be effective for notices and may rely on its records with respect thereto

Article VII
Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 15.5 and 17.4.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any Eligible Property, improved or unimproved. The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other conveyance instrument. If needed by Declarant to make minor adjustments in property lines, then, upon written request from Declarant, the Association shall reconvey to Declarant for no monetary consideration only such unimproved portions of property as are necessary to correct such error or adjustment in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, *subject to any covenants and restrictions set forth in the conveyance instrument transferring such property to the Association.* The Board may adopt reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all portions of and structures situated upon the Common Area;

(b) landscaping within public rights-of-way within or abutting the Bentsen Palm Development;

(c) all ponds, streams, detention areas, wash areas, and/or wetlands located within the Bentsen Palm Development, which serve as part of the storm water drainage system for the Bentsen Palm Development, including improvements and equipment installed therein or used in connection therewith; provided, neither Declarant nor the Association shall have any liability for damage or injury caused by flooding or surface runoff resulting from rainfall or other natural occurrences; and

(d) such portions of any additional property as may be dictated by this Declaration, any Supplemental Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association. The Association shall have the right to enter upon, for the purpose of maintaining, and may maintain, other property which it does not own, including, without limitation, Lots, property dedicated to the public, or property maintained by a Neighborhood Committee, if the Board determines that such maintenance is necessary or desirable to maintain Community-Wide Standard. In addition, the Association may enter into contractual agreements or covenants to share costs with other properties or facilities for maintaining and/or operating shared or mutually beneficial properties or facilities. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own, except to the extent required by law. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs and except for any rules established by the Board with respect to hours of operation, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any property for development or sale within the Bentsen Palm Development. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a covenant to share costs, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed to Owners within the Neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3. Insurance.

(a) Required Coverages. The Association, which at the Board's discretion may act through a duly authorized agent, shall obtain and continue in effect, at a minimum, insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U. S. Department of Veterans Affairs, and the U. S. Department of Housing and Urban Development or any successor entities, if applicable to the Bentsen Palm Development. Accordingly, the Board shall obtain the following insurance, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost in the discretion of the Board, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits

sufficient to cover the full replacement cost of the insured improvements under then current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, in the judgment of a reasonably prudent person, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

In addition, the Association may, if so specified in a Supplemental Declaration applicable to any Neighborhood or otherwise in the Board's discretion, obtain and maintain property insurance on the common insurable improvements within such Neighborhood which insurance shall comply with the requirements of Section 7.3(a)(i). Any such policies shall provide for a certificate of insurance to be furnished, upon request, to the Owner of each Lot insured. Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense, except that (i) premiums for property insurance on Lots within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Exclusive Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. After termination of the Class "B" Control Period, the Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Hidalgo County, Texas, area. All Association policies shall be written in the name of the Association and shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board, which may act through a duly authorized agent, shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association (or, in the case of an Exclusive Common Area, 75% of the total Class "A" votes in the related Neighborhood), and the Class "B" Member, if any, decide within 60 days after the loss

not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60- day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or Owners within the insured Neighborhood, as appropriate, and placed in a capital improvements account. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4. Compliance and Enforcement.

Every Owner and occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, but if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(b) suspending an Owner's right to vote (and such Owner's Lot shall not be counted for purposes of determining the aggregate number of Lots for voting purposes);

(c) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(d) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any Assessment or other charge, including without limitation any fine imposed under this section, owed to the Association;

(e) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(f) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of Article IV and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed, without such action being deemed a trespass;

(g) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Bentsen Palm Development; and

(h) levying Specific Assessments to cover costs incurred by the Association in bringing a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(x) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(y) bringing suit at law or in equity to enjoin any violation or to recover monetary damages, or both.

In addition to any other enforcement rights, if an Owner fails to perform properly such Owner's maintenance responsibility with respect to a Lot, the Association may Record a notice of violation and/or enter the Lot and perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. If a Neighborhood Committee fails to perform its maintenance responsibilities delegated to it pursuant to separate agreement with the Association, the Association may perform such maintenance and assess the costs as a Specific Assessment against all Lots within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Committee, as applicable, with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce the Governing Documents, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred in such action. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case,

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or
- (iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule. The Association, by contract or other agreement, may, but shall not be obligated to, enforce applicable city and county ordinances. Hidalgo County or other local municipalities may enforce ordinances within the Bentsen Palm Development for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege expressly given to the Association by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership. The Board may institute, defend, settle, or intervene on behalf of the Association in, mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

7.6. Indemnification of Officers, Directors, and Others.

Subject to Texas law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding if approved by the Board at the time of such settlement) to which he or she may be a party by reason of being or having been an officer, director, or committee member. To the fullest extent allowed by applicable law, officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual

willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. To the fullest extent allowed by applicable law, the Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Security.

(a) The Association in its discretion may, but shall not be obligated to, maintain, support, provide or provide for services designed to maintain or enhance a safe and secure environment with Bentsen Palm Development and to make Bentsen Palm Development safer and more secure than it may be without such services. To the extent the Association elects to provide such services, the Association's responsibility in this regard shall be as to the entire community and may include, without limitation, perimeter security services and security for other public access within the community.

(b) The Association shall not be responsible for providing security services to any individual, Lot, unit or business operation within Bentsen Palm Development. Regardless of any security services that are provided, no Released Party is an insurer or guarantor of security at the Bentsen Palm Development, nor shall the Released Parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(c) The Released Parties make no representation or warranty, express or implied, that any systems or measures, including any mechanism or system for limiting access to the Bentsen Palm Development Common Area or any Neighborhood, privacy fencing, guard towers, neighborhood watch groups, volunteer security patrols, fire protection systems, burglar alarms, patrolling, monitoring or entry systems, cannot be compromised or circumvented, or that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended.

(d) Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants, guest and invitees of its Lot that the Released Parties are not insurers nor guarantors, and that each Person within the Bentsen Palm Development assumes all risks of personal injury including death and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties. Without limiting the generality of the foregoing, each Owner acknowledges and agrees by accepting title to a Lot that the provision of security services or facilities that promote privacy does not insure nor guarantee the safety or security of the Lot or the Persons or property thereon and each Owner and occupant of a Lot, and their respective guests and invitees is responsible for their own personal safety and the security of their property.

7.8. Powers of the Association Relating to Neighborhood Committees.

Each Neighborhood Committee, if any, shall be established by the Association pursuant to the By-laws and shall be advisory to the Board. The powers, duties and responsibilities of a Neighborhood Committee shall be specified in the Board action establishing such Neighborhood Committee or by separate written agreement between the Association and the Neighborhood Committee. The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Committee which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Committee in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore. A Neighborhood Committee shall take the action specified by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Committee fails to comply, the Association shall have the right to take such action on behalf of the Neighborhood Committee and levy Specific Assessments to cover the costs thereof, as well as impose an administrative charge and sanctions.

7.9. Provision of Services.

(a) The Association may provide or provide for services and facilities for the Members and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. Contracts or transactions shall not be invalidated because one or more directors or officers of the Association or members of any Committee is employed by or otherwise connected with Declarant (or its affiliates), provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction. Any such director, officer or Committee member may be counted in determining the existence of a quorum at any meeting of the Board or Committee of which such person is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if such person were not so interested.

(b) The Board may charge use and service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense or a Neighborhood Expense and assess it as part of the Base Assessment, Neighborhood Assessment or Special Assessment, as applicable. No Owner shall be exempt from the obligation to pay Assessments for such services, if provided to all Owners as a Common Expense, based upon non-use or any other reason.

(c) By way of example, such services and facilities might include landscape maintenance, child care, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing herein shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided and there is herein no obligation to provide such services.

(d) The Board shall be permitted to modify or cancel existing services provided, in its discretion, unless otherwise required by the Governing Documents.

7.10. Relations with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property or the Open Space Habitat or to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.11. Use of Recreational Facilities.

Each Owner acknowledges that certain recreational facilities, including, but not limited to, a swimming pool and related amenities, playgrounds, fishing ponds, and various sports fields and courts, may be provided within the Common Area for the use and enjoyment of the Owners, their families, tenants, other occupants of a Lot, and the guests of any such Persons. Each Owner hereby acknowledges that there are risks associated with the use of any such recreational facilities and that ALL USERS OF SUCH FACILITIES ARE SOLELY RESPONSIBLE FOR SUCH RISK. Each Owner, by accepting a deed to a Lot, acknowledges that such Owner has not relied upon the representations of Declarant or the Association with respect to the safety of any recreational facilities or other Common Area provided within the Bentsen Palm Development. The Association may, but shall not be obligated to, contract with, employ, or otherwise provide, from time to time, a lifeguard or other monitoring personnel to be present at any recreational facility within the Bentsen Palm Development. Each Owner acknowledges that the presence of such personnel shall not create a duty on the part of Declarant or the Association to provide for, insure, or guarantee the safety of any user of the facility. Each Owner acknowledges that the presence of such monitoring personnel shall not in any way alter the risks assumed by each Owner, such Owner's family members, tenants, employees, invitees; licensees, other occupants of Owner's Lot and guests of any such Persons, which risks shall continue to be assumed by the Owner and the user of the recreational facility.

7.12. Limitation of Liability.

(a) The limitations on liability contained in this Section are in addition to, and do not restrict, any limitations on or releases of liability otherwise contained in this Declaration or elsewhere in the Governing Documents or in an applicable law, rule, regulation, ordinance, order or contract. Each Owner, in becoming an Owner including by acceptance of a deed to a Lot, acknowledges and agrees to the limitations on liability contained in this Section.

(b) The use and enjoyment of any Common Area recreational facility involves risk of personal injury or damage to property. Each Owner acknowledges, understands, and covenants to inform its tenants, family members, employees, invitees, licensees and all occupants of its Lot that the Association, its Board and committees, and Declarant (collectively, the "Released Parties") are not insurers of personal safety and that each Person using the Common Area assumes all risks of personal injury and death, and loss or damage to property, resulting from the use and enjoyment of any recreational facility or other portion of the Common Area.

(c) The Released Parties shall not be liable to such Owner or any Person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, death, destruction of property, trespass, loss of enjoyment, or any other wrong or entitlement to remedy based upon, due to, arising from, or otherwise relating to the use of any recreational facility or other portions of the Common Area, including, without limitation, any claim arising in whole or in part from the negligence of the Released Parties.

(d) The Released Parties shall not be liable or responsible for any personal injury, death, illness or any other loss or damage caused by the design, use, operation or maintenance of the streets, roads, gated entry ways landscape features, sidewalks, traffic signs, lighting, road striping or other ancillary features of the Bentsen Palm Development or any malfunction, disrepair or defect thereof or therein even if caused by the negligence of any Released Parties. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner, Declarant, or Occupant shall assume all risk of personal injury, property damage or other loss or damage arising from their use of the roads, streets, trails and all other community facilities and further acknowledges that the Released Parties have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest or invitee of any Owner, Declarant, or occupant relied upon any representations or warranties, expressed or implied, relative to the condition of the streets, roads, any gated entries or other features and facilities of the Bentsen Palm Development.

(e) No Released Parties shall be liable or responsible for any personal injury illness or any other loss or damage caused by the presence or malfunction of utility lines, utility sub-stations, cell or other utility towers or poles, sewer lines or sewer lift-stations adjacent to, near, over, under or on the Eligible Property. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner, Declarant or occupant shall assume all risk of personal injury including death, illness or other loss or damage caused by the presence or malfunction of utility lines, utility sub-stations, cell or other utility towers or poles, electromagnetic fields, sewer lines, sewer lift-stations or associated odors and adjacent to, near, over, under or on the Eligible Property and further acknowledges that the Released Parties have made no representations or warranties, expressed or implied relative to the condition or impact utility lines, utility sub-stations, cell or other utility towers or poles, electromagnetic fields, sewer lines, sewer lift-stations or associated odors.

(f) Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner, Declarant, or occupant, by use of or entry onto such streets, roads, trails, Common Areas and all other community features or facilities covenants not to sue or commence arbitration proceedings against any released parties in relation to the matters disclaimed in this Section.

(g) THE FOREGOING LIMITATIONS ON AND RELEASE OF LIABILITY IS INTENDED TO RELEASE THE RELEASED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

7.13. Adjacent Commercial Farming Operation.

Each Owner acknowledges that the Bentsen Palm Development is or shall be located near or adjacent to an ongoing commercial farming operation and that the existence and operation of such farming operation may

have an impact upon the Bentsen Palm Development. Each Owner, by its purchase of a Lot in the Bentsen Palm Development, and each occupant of a Lot, hereby expressly assumes the risk of personal injury or property damage caused by the maintenance and operation of a the farming operation. Further, each Owner agrees that neither Declarant nor the Association shall be liable to any Owner claiming any loss or damage based upon, due to, or arising from the presence and operation of a commercial farming operation within, adjacent to, or near the Bentsen Palm Development.

7.14. Management Certificate.

The Association shall comply with the requirements of Section 209.004 of the Texas Property Code concerning recording or an appropriately signed and acknowledged management certificate.

7.15. Trails.

The Association may maintain a system of trails throughout the Bentsen Palm Development, and directional and interpretative signage placed along the trails for the benefit of the Members. Members shall comply with all rules regarding Trails imposed by the Board from time to time.

**Article VIII
Association Finances**

8.1. Budgeting and Allocating Common Expenses.

(a) Budget; Base Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than Assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments. The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment under Section 8.7 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

(b) Maximum Base Assessment. With respect to each Lot, the actual Base Assessment may be less than the Maximum Base Assessment for such year, but may not exceed the Maximum Base Assessment.

(c) Base Assessment of Declarant. Declarant (subject to Section 8.8(b)), and any affiliate of Declarant, shall pay an annual Base Assessment in an amount to be determined by Declarant for each Lot they own which is subject to assessment under Section 8.7, which amount may be greater than the Maximum Base Assessment.

(d) Ten Year Freeze on Increase in Maximum Base Assessment. For a period of ten years from the date that Assessments are first levied pursuant to this Declaration, the Maximum Base Assessment shall be THREE HUNDRED DOLLARS (\$300.00) per Lot. There shall be no increase in the Maximum Base Assessment for any year in such ten-year period unless such increase is approved by a vote of at least 75% of the Class "A" members.

(e) Increase in Maximum Base Assessment. After the expiration of the ten-year period specified in Section 8.1(d) above, the amount of the Maximum Base Assessment may be increased if such increase is approved by a vote of at least 50% of the Class "A" members at a meeting at which a quorum is present.

(e) Proration of Base Assessment. The Base Assessment outlined in this paragraph shall be adjusted according to the number of months remaining in the fiscal year at the time a Lot is transferred to an Owner other than Declarant or an affiliate of Declarant.

(f) Potential Subsidy. Declarant may, but shall not be obligated to, reduce the Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.8(b)). Any such subsidy shall be disclosed as a line item in the income portion of the budget.

(g) Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, along with any proposed increase in the Maximum Base Assessment, to each Owner pursuant to the notice requirement herein at least 30 days prior to the effective date of such budget.

(h) Changes Requiring Member Vote. There shall be no obligation to call a meeting to approve the budget or Base Assessment except on petition of the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within ten days after notice of the budget and notice of any assessment. If a proposed budget requires an increase in the Maximum Base Assessment, or if the required percentage of Members have petitioned for a meeting on the budget, the Board shall promptly call a meeting for approval of the budget by the Members. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget and Base Assessment most recently in effect, increased by five percent, shall continue in effect until a new budget and Base Assessment is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting and Allocating Neighborhood Expenses.

(a) Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services required by the Supplemental Declaration applicable to such Neighborhood or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) and any contribution to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Lots in such Neighborhood.

(b) Assessments. The Association is hereby authorized to levy Neighborhood Assessments against all Lots in the Neighborhood which are subject to assessment under Section 8.7 and for which a certificate of occupancy has been issued to fund Neighborhood Expenses. Neighborhood Assessments shall be levied equally against all Lots subject to assessment within the Neighborhood or allocated in such manner as may be set forth in other covenants applicable to the Neighborhood, which may include allocating the assessment on each of the benefited Lots in proportion to the benefit received.

(c) Notice. The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be sent to each Owner in the manner required by the By-laws or by U.S. mail at least 30 days prior to the beginning of the fiscal year.

(d) Approval. Such budget and assessment shall become effective unless (i) the Neighborhood Assessment for the Neighborhood is increased by more than 10% over the prior year and (ii) Owners of at least 10% of the Lots in such Neighborhood petition the Board for a meeting to vote on disapproval of the Budget within 10 days of the sending of the notice thereof. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment. Upon receipt of such petition, the Board shall call a meeting of the Neighborhood. If a quorum is not attained at such meeting duly called, the proposed budget and Neighborhood Assessment shall be deemed approved. If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget and

Neighborhood Assessment in effect for the immediately preceding year, increase by five percent, shall continue for the current year.

(e) Revisions. The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of Owners in the affected Neighborhood to disapprove the revised budget as set forth above. All amounts collected by the Association as Neighborhood Assessments shall be expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.3. Budgeting for Reserves.

The Board shall prepare and review at least annually reserve budgets for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may include in the Common Expense budget adopted pursuant to Section 8.1 and the Neighborhood Expense budgets adopted pursuant to Section 8.2, as it deems appropriate in the exercise of its business judgment, a capital contribution to fund reserves in amounts sufficient to meet projected needs with respect both to amount and timing by annual contributions over the budget period.

8.4. Special Assessments.

(a) In addition to other authorized assessments, the Association may levy Special Assessments (i) to cover unbudgeted expenses or expenses in excess of the amount budgeted or (ii) for special services (e.g., landscaping and yard maintenance on Lots) required by the Supplemental Declaration applicable to any particular Neighborhood or Neighborhoods. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses or Exclusive Common Area expenses.

(b) Required Services. With respect to any Special Assessments specified in Section 8.4(a)(ii) above, the amount of the Special Assessment for such required services shall be the amount approved by the Association based upon the approved contract for the required services. In the event such contract specifies the amount the Association shall be required to pay with respect to particular Lots, the Special Assessment for such Lots shall be in the amount specified in such contract (which may be subject to increase as specified in the contract). In the event the contract does not so specify the amount, the Association shall allocate the amount in its discretion.

(c) Approval. Except as otherwise specifically provided in this Declaration or in the applicable Supplemental Declaration and except for Special Assessments specified in Section 8.4(a)(ii) above, any Special Assessment shall require the affirmative vote or written consent of Members (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 67% of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to a Lot upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.9). Specific Assessments for special services may be levied in *advance of the provision of the requested service*; and

(b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct (or the failure to act) of the Owner or occupant of a Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b). Any expense incurred by the Association with respect to enforcement, including without limitation attorneys fees and expenses, may be included as part of a Specific Assessment. The Association may levy a Specific Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to Owners in the Neighborhood and an opportunity for such Owners to be heard before levying any such Assessment.

8.6. New Member Assessment.

(a) Authority. In addition to any administrative or transfer fee collected to cover administrative costs of membership transfer hereunder or under the Bylaws, the Association shall assess and collect an assessment known as a "New Member Assessment" upon each sale, conveyance or transfer of a Lot, other than exempt transfers as set forth herein. The New Member Assessment shall be charged to the seller, grantor or transferor of the Lot, as applicable, provided that (i) this provision shall not prevent the seller and purchaser of a Lot from contracting among themselves as to whether the purchaser shall reimburse the seller for the New Member Assessment; and (ii) if the seller, grantor or transferor of the Lot fails to pay the New Member Assessment, the purchaser or grantee shall be jointly and severally responsible for payment of the New Member Assessment and the obligation to pay the New Member Assessment shall be secured by the Association's lien for assessments. Each Owner desiring to transferr a Lot shall notify the Board at least seven days prior to the scheduled closing. Such notice shall include the name of the buyer, the scheduled date of title transfer, and other information the Association may reasonably require.

(b) Fee Limit. The New Member Assessment shall be in an amount established by the Board from time to time, but not to exceed the greater of (i) Six Hundred Fifty dollars (\$650) per Lot transferred, or (ii) 1/3 of one percent of the Gross Selling Price (as defined herein) of the Lot, with all improvements. The New Member Assessment shall be due upon the closing of the sale or transfer of the Lot. The Gross Selling Price shall mean the total consideration paid by the purchaser or transferee of the Lot to the seller of the Lot, including financed amounts, but excluding transfer taxes and fees imposed by any governmental entity, if any.

(c) Purpose. New Member Assessments shall be used for any purpose the Board deems beneficial to operation of the Association.

(d) Exempt Transfers. No New Member Assessment shall be levied upon the following sales, transfers or conveyances of Lots:

- (i) by or to the Declarant;
 - (ii) by a Builder holding title to at least five unimproved Lots solely for purposes of development and resale (provided that this exemption shall not apply to the transfer of any Lot held by such builder or developer with improvements upon it);
 - (iii) by a co-owner to any Person who was a co-owner of the Lot immediately prior to such transfer;
 - (iv) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
 - (v) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Assessment shall become due unless a transfer by the grantor directly to such subsequent transferee would be exempt under this provision;
- or

(vi) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

The New Member Assessment set forth herein is in addition to any administrative fee set forth herein or in the By-laws covering the costs of establishing new membership documents upon lease or transfer.

8.7. Authority To Assess Owners; Time of Payment.

(a) The Association is hereby authorized to levy Assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay Assessments shall commence for each Lot on the first day of the month following:

(i) the month in which the Lot is made subject to this Declaration by inclusion in Exhibit A or by addition through a Supplemental Declaration;

(ii) the month in which the Board first determines a budget and levies assessments pursuant to this Article; or

(iii) the month in which a preliminary plat showing the Lot is approved by the City of Mission, Texas, whichever is later; provided, if any Recorded Supplemental Declaration specifies a different date for the commencement of Assessments against a portion of the Bentsen Palm Development, such date shall control the issue with respect to the property covered by such Recorded Supplemental Declaration.

(b) It is the intention of the Declarant that Owners shall be assessed for unimproved Lots on the same basis as improved Lots; provided, however, that unimproved Lots held by Builders shall not be subject to assessment until such time that (i) the Builder owns fewer than five Lots, or with respect to a Neighborhood Assessment, fewer than five Lots within the Neighborhood or (ii) with respect to any particular Lot, the Builder commences construction Lot.

(c) The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot. Assessments shall be paid in such manner and on such dates as the Board may establish.

(d) The Board may require payment of Assessments in advance, advance payment of assessments at the closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance based on the prior year's Assessment, and any additional amount for the actual full Assessment on the first day of each fiscal year.

(e) If any Owner is delinquent in paying any Assessments or other charges levied on such Owner's Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

8.8. Obligation for Assessments.

(a) Personal Obligation. Declarant, for each Lot owned by it within the Eligible Property, hereby covenants and agrees, and each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot or portion of the Bentsen Palm Development, regardless of whether it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot) to pay to the Association (or to an independent entity or agency that may be designated by the Association to receive such monies) all Assessments authorized in the Governing Documents. All Assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish,

subject to the limitations of Texas law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Except as provided in Section 8.9, upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance. Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an Assessment was made, if any, plus five percent, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. No Owner shall be exempt from liability for Assessments by non-use of Common Area, abandonment of a Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. Upon written request, the Board shall furnish to any Owner liable for any type of Assessment, or a Mortgagee or other Person designated by the Owner, a certificate in writing signed by an officer of the Association, or a designated agent of the Board, setting forth whether Assessments have levied, whether Assessments have been paid and any delinquent amounts. Such certificate shall be conclusive evidence of Assessment payments or amounts delinquent as of the date of the certificate. The Board may require advance payment of a processing fee for the issuance of such certificate.

(b) **Declarant's Obligation To Fund Budget Deficits.** During the Class "B" Control Period (and, in any event, for no less than four years from the Recording of this Declaration), Declarant shall be obligated to pay the difference between the amount of Assessments levied on all Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year (the "budget deficit"). After such time, Declarant may annually elect either to pay Assessments on each of its unsold Lots in the same manner as any other Owner or to pay the budget deficit. If Declarant elects to pay assessment on each Lot and, after such payment, a shortage exists, Declarant may, but shall not be obligated to, pay such shortage. Unless Declarant otherwise notifies the Board within 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding year. The Association shall have a lien against all Lots owned by Declarant to secure Declarant's obligations under this Section, which lien shall have the same attributes and shall be enforceable in the same manner as the Association's lien against each Lot under Section 8.9. Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After the Class "B" Control Period, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

(c) **Purpose of Assessments.** All Assessments levied by the Association shall be used exclusively for the purpose of promoting the enjoyment and welfare of the Owners of Lots and for the proper maintenance and improvement of the Areas of Common Responsibility, including but not limited to: (i) maintenance (and replacement as necessary) of the Common Area, (ii) payment of premiums for insurance required or permitted hereunder, (iii) paying the cost of labor, equipment (including leasing expenses) and material required for, and management and supervision of, the Common Area, (iv) paying the costs and fees of a manager or firm retained to manages the affairs and carry out the duties of the Association, (v) carrying out the duties of the Board or the Association and (vi) carrying out the purposes of the Association as stated herein.

8.9. Lien for Assessments.

The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Texas law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under Texas law. Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and Record a document setting forth as to any Lot, the amount of the delinquent sums due the Association at

the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and Record any such document shall not, to any extent, affect the validity, enforceability, perfection, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended, in like manner of any deed of trust on real property. Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Lot to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf (and it shall not be counted in determining the aggregate number of Lots for voting or quorum purposes); (b) no Assessment shall be levied on it; and (c) each other Lot subject to such Assessment shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such Assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to such acquisition of title. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots (including the foreclosed Lot) subject to Assessment under Section 8.7, including such acquirer, its successors and assigns.

8.10. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Property owned by the Association; and
- (d) Property which is not subject to this Declaration including, without limitation, any Open Space Habitat, undeveloped adjoining property owned by Declarant or any adjoining property platted and filed of record prior to January 1, 2006.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.11. Capitalization of Association.

Within 30 days from the first organizational meeting of the Association, the Declarant shall contribute a sum to be determined by Declarant for the capitalization of the Association.

**PART FOUR:
COMMUNITY DEVELOPMENT**

The Declaration reserves various rights to Declarant in order to facilitate the smooth and orderly development of the Bentsen Palm Development and to accommodate changes in the Master Plan which inevitably occur as the Bentsen Palm Development grows and matures.

**Article IX
Expansion of the Bentsen Palm Development**

9.1. Expansion by Declarant.

(a) Declarant may from time to time subject to the provisions of this Declaration additional real property by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

(b) Declarant's right to expand the Bentsen Palm Development pursuant to this Section shall expire 20 years after the Recording of this Declaration. Until then, Declarant may transfer or assign this right to annex property to any Person who is the developer of at least a portion of the real property described in Exhibit "A." Declarant shall memorialize such transfer in a Recorded instrument. Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration.

9.2. Expansion by the Association.

The Association may subject additional property not included in Eligible Property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of more than 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property for development or sale within the Bentsen Palm Development, the consent of Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Bentsen Palm Development to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Recording Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

**Article X
Additional Rights Reserved to Declarant**

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it owns any property for development or sale within the Bentsen Palm Development, for the purpose of removing from the coverage of this Declaration any portion of the Bentsen Palm Development which (i) has not yet been improved with structures or (ii) if improved, has not been placed into a Neighborhood or designated as Common Area. Any such withdrawn property shall not be subject to the restrictions, easements and covenants contained herein and may be used or disposed of at Declarant's discretion, including without limitation for commercial developments and governmental purposes, and such property may at Declarant's discretion be subjected to other restrictions pursuant to other Recordings.. Any such withdrawal of Eligible Property which would reduce the total number of acres of Eligible Property subject to the Declaration (calculated in the aggregate to include property

previously withdrawn) by more than 20 and shall require the consent of the Owner(s) of the property to be withdrawn, if such Owner is not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities.

(a) Declarant and Builders authorized by Declarant, respectively, may construct and maintain upon Lots they own, such facilities and activities as reasonably may be required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model Lots, and sales offices, provided that all such Builders shall comply with any rules, requirements or request of Declarant or the Board with respect thereto. Signs and other improvements constructed in connection with such use may be subject to approval under Article IV. Declarant and such Builders shall have easements for access to and use of such facilities at no charge.

(b) The right of the Declarant, its sales agents, representatives and prospective purchasers to the non-exclusive use of the Common Areas, without cost, for access, ingress, egress use and enjoyment, in order to promote the business of Declarant, and to market and sell Lots in the Properties or on adjacent lands for up to thirty days after the closing of the sale of the last Lot owned by Declarant in the Eligible Property; provided however, such use shall reasonably accommodate the rights of enjoyment of the other Owners.

10.3. Right To Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion and for developing the Bentsen Palm Development in accordance with the Master Plan. Every Person that acquires any interest in the Bentsen Palm Development acknowledges that the Bentsen Palm Development is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to

(a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or

(b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4. Right to Approve Additional Covenants.

No Person Builder shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Bentsen Palm Development without Declarant's review and written consent. Any document Recorded in violation of this Section 10.4 shall be void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

10.5. Right To Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed and Recorded by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.6. Exclusive Rights To Use Name of Development.

No Owner shall use the name "Bentsen Palm Development" in any printed or promotional material relating to a real estate development within Hidalgo County without Declarant's prior written consent. However, Owners may use the name "Bentsen Palm Development" in printed or promotional matter where such term is used

solely to specify that particular property is located at the Bentsen Palm Development and the Association shall be entitled to use the words "Bentsen Palm Development" in its name.

10.7. Easement to Inspect and Right to Correct.

Declarant reserves for itself, Builders, and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Bentsen Palm Development, including Lots, and a perpetual nonexclusive easement of access throughout the Bentsen Palm Development to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

10.8. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

**PART FIVE:
PROPERTY RIGHTS WITHIN THE COMMUNITY**

The nature of living in a planned community, with its wide array of properties and development types and ongoing development activity, requires the inclusion of certain provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others in or adjacent to the community.

**Article XI
Easements**

11.1. Easements in Common Area.

With respect to any property designated by the Declarant as Common Area and transferred to the Association, Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area owned by the Association, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area
 - (A) for any period during which any charge against such Owner's Lot remains delinquent, and
 - (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by Persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(vii) limit the use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XII to the exclusive use of certain Owners.

Any Owner may extend the rights of use and enjoyment hereunder to the members of such Owner's family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases a Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease. Declarant, so long as Declarant owns any property for development or sale within the Bentsen Palm Development Community, and the Association shall have the right to grant easements in and to the Common Area to any service provider or third-party contractor as may be necessary, in the sole discretion of Declarant or the Association, in connection with such service provider's or contractor's provision of services to the Bentsen Palm Development. Any such easements shall be subject to an easement of access for Owners, and any other limitations or restrictions placed upon the easement by the grantor. The grantor of such easements, either Declarant or the Association, shall have the right to require specifically that the benefited party, after exercising the easement, take restorative or ameliorative action with respect to the burdened property.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any Eligible Property or property described in Exhibit "A" of this Declaration perpetual non-exclusive easements throughout the Bentsen Palm Development (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Bentsen Palm Development, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Bentsen Palm Development. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b), if other than Declarant or the Association, shall be given written notice and the opportunity to disapprove in advance of the grant.

(c) Minimum Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements To Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, and assigns an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property within and immediately adjacent to the Bentsen Palm Development, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such property.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Bentsen Palm Development as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents; provided, however, except to avoid imminent threat of personal injury or property damage, entry into any portion of any property not generally open to the public shall only be authorized during reasonable hours and after receipt of the consent of the Owner or occupant, which consent shall not unreasonably be withheld. The easement granted hereunder shall not create an obligation or duty on the part of Declarant or the Association to provide for safety or security within the Bentsen Palm Development.

11.6. Easements for Lake, Canal or Detention Pond Maintenance.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon any lake, canal or detention pond located within the Area of Common Responsibility, and an easement permitting reasonable access to the same, to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant reserves for itself, the Association, and their successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area in order to (a) alter in any manner and generally maintain any body of water within the Area of Common Responsibility; and (b) maintain and landscape the slopes and banks pertaining to such areas. All Persons shall use reasonable care in the exercise of these easements and, after such exercise, shall restore the property to its prior condition, to the extent practicable and reasonable. Nothing herein shall be construed to make Declarant, the Association, or any other Person liable for damage or injury resulting from flooding or surface runoff due to rainfall or other natural occurrences. Any lakes or wetlands within the Bentsen Palm Development are designed as water management areas and are not designed as aesthetic features. Due to fluctuations in water elevations within the immediate area, the water level of lakes, creeks, and streams will rise and fall. Neither Declarant nor the Association has no control over such elevations. Therefore, each Owner releases Declarant, the Association and the local city and municipality, and their affiliates, successors and assigns from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including attorneys' fees and costs and appellate fees and costs, related to or arising out of the water elevations, including the absence of any water in the lakes, creeks, or streams. Neither the Association nor any Owner shall alter, modify, expand, or fill any lakes or wetlands located on or in the vicinity of the Bentsen Palm Development, without the prior written approval of Declarant,

so long as Declarant owns any Eligible Property, including property described in Exhibit "A" for development as part of the Bentsen Palm Development, and such local, state, and federal authorities as may have relevant jurisdiction over such matters.

11.7. Easements for Drainage Areas.

This Declaration hereby creates in favor of Declarant, so long as Declarant owns any property for development or sale within the Bentsen Palm Development, and their successors, assigns, and designees, the nonexclusive right and easement to enter upon drainage ways, drainage culverts, natural drainage areas, washes and wash areas, other areas within the Common Area (but not on a Lot) used to drain surface runoff and flood waters, and any improvements and equipment installed or used in connection therewith to install, maintain, repair, and replace such areas and property. Except to avoid imminent threat of personal injury or property damage, entry onto any portion of any property not generally open to the public shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent, which consent shall not unreasonably be withheld.

**Article XII
Exclusive Common Areas**

12.1. Purpose.

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry gates and other entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

12.2. Designation.

Any Exclusive Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Neighborhoods, so long as Declarant owns any property for development or sale within the Bentsen Palm Development. In addition, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment; provided that as long as Declarant owns any property for development or sale within the Bentsen Palm Development, any such assignment or reassignment shall also require Declarant's written consent.

12.3. Use by Others.

Upon approval of a majority of Owners within the Neighborhood to which any Exclusive Common Area is assigned, the Association may permit Owners in other Neighborhoods to use all or a portion of such Exclusive Common Area and may require the payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

**PART SIX:
RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

The growth and success of Bentsen Palm Development as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with its neighbors, and protection of the rights of others who have an interest in the community.

Article XIII
Dispute Resolution and Limitation on Litigation

13.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, Owners and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), acknowledge that from time to time disputes may arise among various Bound Parties and commit to work together in an attempt to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the Bound Parties. The Bound Parties agree that it is in the best interests of all concerned to encourage the amicable resolution of disputes involving the Bentsen Palm Development Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in this Article XIII in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Bentsen Palm Development (other than matters of aesthetic judgment under Article IV, which shall not be subject to review);

(c) The following shall not be considered "Claims", notwithstanding the foregoing, unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Article XIII:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain equitable relief (e.g., temporary restraining order, injunction, or specific performance) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(vi) any suit by an Owner to challenge the legitimacy or enforceability of, but not the application of, standards or rules pursuant to the provisions of Article III or Article IV.

(d) The procedures specified in Section 13.2 shall be the sole and exclusive procedures for the resolution of Claims between the Bound Parties; provided, however, that a party may file a complaint to seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary. Despite such action, the parties will continue to participate in good faith in the procedures specified in Section 13.2

(e) Except as expressly permitted in the Declaration, no party to any Claim or other dispute shall be entitled to collect attorneys' fees or expenses from Declarant or the Association. Claim or other matter among the Bound Parties in which litigation, and all parties waive any right to trial by jury.

13.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice by certified mail, return receipt requested, or personal delivery, to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim

Within fifteen days after delivery of the notice, each Respondent shall submit to the Claimant a written response stating a statement of the Claimant's position and a summary of the legal basis supporting that position. Any Bound Party involved in a Claim who is not a single individual (including, for example, in the case of co-Owners) shall also provide in the notice or response, as the case may be, the name and title of the executive, office or other individual who will represent that party and who will have authority to settle the Claim on the Bound Party's behalf. All reasonable requests for additional information from Claimant or Respondent regarding a Claim will be met by the other party.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. In the event substantial travel expenses would be incurred, telephone conferences may be used for the negotiation. If requested in writing, accompanied by a copy of the notice of the Claim, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Hidalgo County, Texas area. (In the event the parties do not agree on a mediator, the Board shall designate such an independent agency.) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Party shall bear its own costs of the mediation, including attorneys, fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than

one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) Arbitration. Any Claim, which has not been resolved by mediation as provided herein within 30 days after appointment of a mediator, shall be finally resolved by arbitration in accordance with the Rules for Non-Administered Arbitration of the International Institute of Conflict Prevention and Resolution then currently in effect, by a sole arbitrator; provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time period set forth above. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Mission, Texas. Each Party shall bear its own costs of the arbitration, including attorneys, fees, and each Party shall share equally all fees charged by the arbitrator.

13.3. Initiation of Litigation.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

Prior to the Association or any Member commencing any judicial or administrative proceeding to which Declarant is a party and which arises out of an alleged defect within the Bentsen Palm Development or any improvement constructed upon any property within the Bentsen Palm Development, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of the Bentsen Palm Development, including any improvement as to which a defect is alleged. In addition, the Association or the Member shall notify the Builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes. This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings set forth above and may not be amended during the Class "B" Control Period without the Declarant's approval..

13.4 Limitation of Damages.

All Bound parties agree that, in any lawsuit arising out of a Claim subject to the procedures set forth in Section 13.2, any damage award shall be limited to the amount of any actual economic loss suffered by the prevailing party and shall not include punitive damages or damages for pain and suffering, except that punitive damages shall be permitted in the case of a lawsuit arising out of a violation of the Governing Documents.

**Article XIV
Open Space Habitat and General Parklands**

14.1. General.

Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use the Open Space Habitat or general parkland ("Parkland") owned by ML Rhodes, Ltd. or Hidalgo County Water Control and Improvement District No. 1 or another party. Rights to use these lands will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the owner of the Open Space Habitat or Parkland, as the case may be. The owner, lessee, or operators of the Open Space Habitat or Parklands shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Open Space Habitat, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members. The representations made and consent rights provided in this paragraph shall not confer any rights upon any Person with respect to the day-to-day use and operation of the Open Space Habitat or Parkland. This Article is intended to put all Persons on notice that no rights whatsoever in the Open Space Habitat or Parkland are conveyed or granted herein, and that nothing contained in this Declaration shall be deemed to grant any such rights or to limit in any way the rights of the owners of the Open Space Habitat or Parkland.

14.2. Conveyance of Open Space Habitat/Parkland

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the acquisition or assumption of operation of the Open Space Habitat or Parkland, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the owner of the Open Space Habitat or Parkland, as the case may be. All Persons, including all Owners, are advised that the Open Space Habitat and Parkland currently is conceptual only and may or may not be a part of Bentsen Palm Development. Consent of the Association, any Neighborhood Committee, the Members, or any Owner shall not be required to effectuate any change in ownership or operation of the Open Space Habitat and/or any Parkland, for or without consideration and subject to or free of any mortgage, covenant, lien, or other encumbrance.

14.3. View Impairment.

Neither Declarant, the Association, nor the owner of the Open Space Habitat or Parkland, guarantees or represents that any view over and across the Open Space Habitat or any Parkland from Lots adjacent to the Open Space Habitat or any Parkland will be preserved without impairment. The owner, lessee, or operator of the Open Space Habitat or Parkland shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Open Space Habitat from time to time. In addition, the owner of the Open Space Habitat may, in its sole and absolute discretion, change the location, configuration, size and elevation of features from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Article XV Mortgagee Provisions.

15.1. Notices of Action.

Upon receipt of written request, the Association shall provide Mortgagees with notices required by the Federal Home Loan Mortgage Association, the Federal National Mortgage Association, the U. S. Department of Housing and Urban Development, or the U. S. Department of Veterans Affairs to the extent applicable.

15.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

15.4. HUD/VA Approval.

As long as there is a Class "B" membership, and if the U. S. Department of Housing and Urban Development or the Department of Veterans Affairs is insuring or guaranteeing the mortgage on any Lot, the following actions shall require the prior approval of such agency: annexation of additional property; dedication, conveyance, or mortgaging of the Common Area; merger or dissolution of the Association; or material amendment of this Declaration.

**PART SEVEN:
CHANGES IN THE COMMUNITY**

Communities such as Bentsen Palm Development are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. The Bentsen Palm Development and the Governing Documents must be able to adapt to these changes while protecting the special features that make Bentsen Palm Development unique.

**Article XVI
Changes in Ownership of Lots**

Any Owner selling or otherwise transfer title to a Lot shall, in addition to the notice required under Section 8.6 above, give the Board written notice of the name and address of the purchaser or transferee and the date of such transfer of title within 60 days after the sale. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board or the date title transfers, whichever is later.

**Article XVII
Changes in Common Area**

17.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property for development or sale within the Bentsen Palm Development) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as set forth in this Article. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, so long as Declarant owns any property for development or sale within the Bentsen Palm Development, and at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

17.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

17.3. Transfer or Dedication of Common Area.

The Association may only dedicate, transfer, or mortgage portions of the Common Area with the approval of 67% of the Class "A" Members of the Association and the consent of the Class "B" Member, if any.

17.4. Actions Requiring Owner Approval.

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees the Mortgage on any Lot, then the following actions shall require the prior approval of not less than two-thirds (2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property; and dedication, conveyance or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 17.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

**Article XVIII
Amendment of Declaration**

18.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. At any time, Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. Any amendment pursuant to this paragraph shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, after termination of the Class "B" Control Period, so long as Declarant owns property for development or sale within the Bentsen Palm Development, it may amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right granted an Owner under this Declaration without such Owner's consent in writing.

18.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only if each the following conditions are met:

- (i) the amendment has been approved by the affirmative vote or written consent, or any combination thereof, of:
 - (a) 75% of the total Class "A" votes in the Association and
 - (b) 75% of the Class "A" votes held by Members other than Declarant; and
 - (c) if applicable, any higher percentage of Class "A" votes required to amend any specific clause;
- (ii) so long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, Declarant has approved the amendment; and
- (iii) the approval requirements set forth in Article XV shall be met, if applicable.

18.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively

presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

18.4. Exhibits.

The following exhibits to this Declaration are attached hereto and incorporated herein by this reference.

Exhibit A: Eligible Property and Neighborhood Designations

Exhibit B: Construction and Use Restrictions

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

RHODES ENTERPRISES, INC.
a Texas Corporation

By: [Signature]
Name: KEN DeJARNETT
Its: CEO

STATE OF TEXAS
COUNTY OF HIDALGO

BEFORE ME, the undersigned authority, on this 10th day of October, 2006, personally appeared Ken DeJarnett, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and considerations therein expressed, and in the capacity therein stated.

[Signature]
Notary Public

My Commission Expires: 7/26/2010



EXHIBIT "A"

Eligible Property defined as a 2,556.824 acre tract out of the South end of Porciones 48, 49, 50, 51 and 52 detailed by annexation into the City of Mission as Bentsen Palm Development but excluding the following three tracts of land:

Excluded Tract I:

Del Oro Subdivision, Unit No. 1 as recorded in Vol. 37, Pg 147 MRHC

Excluded Tract II:

Del Oro Subdivision, Unit No. 2 as recorded in Vol 47 Pg 58 MRHC

Excluded Tract III:

A tract of land containing 93.265 acres, more or less, out of PORCION 52, Hidalgo County, Texas, said 93.265 acres being a part or portion of a certain 2556.824 acre tract out of the South end of Porciones 48, 49, 50, 51 and 52, which said 2556.824 acre tract was conveyed to Bentsen Palm, Ltd. by virtue of a Warranty Deed from Mayfair Farms, Inc., recorded under Document No. 715282, Official Records, Hidalgo County, Texas, said 93.265 acres also being more particularly described by metes and bounds of record.

EXHIBIT "B"**CONSTRUCTION AND USE RESTRICTIONS**

VARIANCE. The use of the Property is subject to the restrictions contained in the Article, and subject to rules adopted pursuant to this Article. The board or the Architectural Reviewer, as the case may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not affect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

CONSTRUCTION RESTRICTIONS. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every lot must have the characteristics described in this Article and in the Savannah Architectural Standards, which may be treated as the minimum requirements for improving and using the lot. The Architectural Reviewer and the board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his lot and dwelling.

ASSOCIATION'S RIGHT TO PROMULGATE RULES. The Association, acting through its board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- a. Use of common areas.
- b. Architectural Standards
- c. Hazardous, illegal, or annoying materials or activities on the Property.
- d. The use of Property-wide services provided through the Association.
- e. The consumption of utilities billed to the Association.
- f. The use, maintenance, and appearance of exteriors of dwelling and lots.
- g. Landscaping and maintenance, and appearance of exteriors of dwellings and lots.
- h. The occupancy and lease of dwelling.
- i. Animals.
- j. Vehicles.
- k. Disposition of trash and control of vermin, termites, and pests.
- l. Anything that interferes with maintenance of the Property, operation of the Association, administration of the Documents, or the quality of life for residents.

ACCESSORY SHEDS. Accessory structures, such as dog houses, gazebos, metal storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for the Residential Single-Family Property in terms of type number, size, location, color, material, and height, subject to all of the following limitations:

- a. An accessory structure may not be located in front yards or in unfenced portions of side yards facing streets. Accessory structures may be located within fenced yards.
- b. An accessory structure must not be readily visible from any street, but may be visible from an alley. For corner lots, this limitation applies to both streets.
- c. If any accessory structure that is readily visible from a street is installed on a lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.
- d. These limitations do not apply to certain neighborhoods or lots designated by the Declarant or Association exclusively for Recreational Vehicle usage. Special requirements for such lots or neighborhoods are found in specific Covenants filed for such neighborhood.

ANIMAL RESTRICTIONS. No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose of for food. Customary domesticated household pets may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment on each lot. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots, which typically means that pets may not be allowed to howl, yap, whine, caterwaul, or screech more often than infrequently. Pets must not be allowed to roam. No pet is allowed on a common area or the lot of another owner unless carried or leashed. **Resident is responsible for the removal of his pet's wastes from the common areas of the Property and from the lot of another owner.**

ANNOYANCE. No lot or common area may be used in any way that: (1) may reasonably be considered annoying in neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health of safety of residents of the other lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The board has the sole authority to determine what constitutes an annoyance.

APPEARANCE. Both the lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street or neighboring lots. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

BUSINESS USE. A resident may use a dwelling for personal business or professional pursuits provided that: (1) the uses are incidental to the primary use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) the uses do not entail visits to the lot be employees or the public in quantities that materially increase the number of vehicles parked on the street; and (4) the uses do not interfere with residents' use and enjoyment of neighboring lots.

CARPORTS. No carport may be installed, constructed, or maintained on the front of any lot or dwelling, with or without approval of the Architectural Review. No carport may be installed, constructed, or maintained on any other portion of a lot without the Architectural Reviewer's prior written consent. In other words, all carports require the written approval of the Architectural Reviewer, and carports on the front sides or front yards or dwellings are expressly prohibited.

COLOR CHANGES. The colors of buildings, fences, exterior decorative items, window treatments, and all other improvements on a lot are subject to regulation by the Architectural Reviewer. Because the relative merits of any color are subjective matters of taste and preference, the Architectural Reviewer determines the colors that are acceptable to the Association. A change or addition of a color that is visible from the street, a common area, or another lot is not permitted without prior written approval of the Architectural Reviewer.

DECLARANT PRIVILEGES. In connection with the development and marking of the Property, Declarant has reserved a number of rights and privileges to use the Property in ways that are not available to other owners and residents, as provided in this Declaration. Declarant's exercise of a Development Period right that appears to violate a rule or use restriction of this Article does not constitute waiver or abandonment of the restriction be the Association.

DRAINAGE. Each lot has a surface water drainage and grading pattern that relates to the surface water drainage pattern for the entire Property. No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board. The owner of each lot is responsible for maintenance of the original drainage and grading pattern for his lot and is hereby prohibited from altering or interfering with the drainage pattern on his lot, by act or by omission. If any portion of a drainage feature or easement is within the fenced portion on his lot, the owner will keep the drainage feature or easement area free of debris and excess vegetation and will ensure that the fence does not obstruct or restrict the free flow of surface water under and trough the fence, which must have openings or be sufficiently elevated to allow the flow of rainfall runoff. The owners hereby (1) acknowledge that their lots share a common drainage pattern and (2) hold the Association, the Builders, and Declarant harmless from damage or claims relating to the maintenance of drainage features and easements. In case of emergency, the Association, the Water District, and any owner may enter any lot in the Property, with or without notice or permission, for the purpose of clearing or unclogging the surface water drainage system that serves the Property.

DRIVEWAYS. The driveway portion of each lot, which is the route of vehicular access to the garage, must be maintained in a neat condition and may not be used for any purpose that interferes with ongoing access from a street or alley to the garage.

FIRES. Except for fires that are supervised, contained, and permitted by the Rules, no exterior fires on the Property are permitted. Bonfires, campfires, and burning of refuse are prohibited everywhere on the Property, except for common area events sponsored by the Association.

FLAGS. Each owner and resident of Bentsen Palm Development has a right to fly the flag on his lot. One United States flag ("Old Glory") and /or one Texas flag ("Line Star Flag") may be displayed in a respectful manner on each lot subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or common area without specific written permission of Bentsen Palm Development Association.

GARAGES. Without the board's prior written approval, the original garage area of a lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when a vehicle is entering or leaving.

"GARAGE SALES". The Association may adopt rules limiting the frequency, location, and signage of garage sales, yard sales, estate sales, rummage sales, and other types of merchandise sales activities that may be expected to attract the public to Bentsen Palm Development.

GUNS & FIREWORKS. Hunting, shooting, discharging firearms, and the storage or use of fireworks are not permitted anywhere on or from the Property, except for events sponsored by Bentsen Palm Development or the City of Mission. For purposes of illustration but not limitation, this prohibition includes uses of the following implements: air rifles or BB guns, paint ball guns, slingshots, bow and arrows, spears, and crossbows. The Association is not required to enforce this provision by confronting an armed person.

HOLIDAY DECORATIONS. Residents may display religious, cultural, and holiday decorations in and on their homes and yards subject to the Association's right to regulate the time, place, and manner of displays that are visible from the street. Decorations, including lighting displays, are permitted inside windows, on the exteriors of homes, and on front yards provided (1) they are customary for residential neighborhoods, (2) they are to scale or proportionate to the size and setback of the home, (3) they do not create a noise or light disturbance for neighbors, (4) they are appropriate for the holiday, and (5) they are installed no earlier than 30 days before the holiday, and are removed within 30 days after the holiday.

LANDSCAPING. No person may perform landscaping, planting, or gardening on the common area without the board's prior written authorization.

LEASING OF HOMES. An owner may lease the dwelling on his lot. Whether or not it is so stated in a lease, every lease is subject to the Documents. An owner is responsible for providing his tenant with copies of the Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Documents against the owner's tenant.

LIGHTS. Exterior light sources on a lot should be unobtrusive, shielded to prevent glare, directed away from neighboring homes and yards, with no spillover light on neighboring property. All visible exterior light fixtures on a lot should be consistent in style and finish with the period architecture of Bentsen Palm Development. The wattage of building-mounted exterior lighting may not exceed 150 watts per fixture. All exterior light must be in shades of white.

Color lights and sodium vapor lights are prohibited. The Section does not apply to light fixtures maintained by the Association, City of Mission, other governmental entity or by the Water District, such as street lights.

NOISE & ODOR. A resident must exercise reasonable care to avoid making or permitting to be made (1) loud, disturbing, or objectionable noises, (2) harmful fumes, or (3) obnoxious odors that may disturb or annoy residents or neighboring lots. The Rules may prohibit the use of noise-producing security devices and wind chimes.

OCCUPANCY. Other than the completed principal dwelling, no thing or structure on a lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

PARKING. Residents are expected to park their vehicles in their garage, and use their driveway for overflow parking. The Association has the right to prohibit or limit parking on streets, and may impose different rules on different streets in the Property, or along sections or sides of streets, and may change the street parking rules from time to time in response to changing conditions, neighborhood standards, governmental recommendations, aesthetics, or any combination of these. Unless and until the board adopts different rules for street parking, without board approval, no vehicle may be parked on a residential street for more than 3 consecutive days and /or nights. Moving the vehicle during the day but parking on the street at night constitutes one day. No vehicle may be parked in a manner that may impede access to homes in Bentsen Palm Development by an emergency vehicle.

PATIO COVERS. Without the prior written approval of the Architectural Reviewer, patio covers, including awnings, are prohibited (not allowed). If a patio cover is installed in violation of this Section, the Architectural Reviewer reserves the right to determine that the patio cover is unattractive or in appropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

RESIDENTIAL USE. The use of a house lot is limited exclusively to residential purposes or any other use permitted by this Declaration, including limited business uses described above.

SCREENING. The Architectural Reviewer may require that the following items must be screened from the view of the public and neighboring lots and dwellings, if any of these items exists on the lot: (1) air conditioning equipment; (2) satellite reception equipment; (3) clothesline, drying racks, and hanging clothes, linens, rugs, or textiles of any kind; (4) yard maintenance equipment; (5) wood piles and compost piles; (6) garbage cans and refuse containers; (7) anything determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a street or alley, or the view of a person of average height standing in the middle of a yard of an adjoining lot.

SIGNS. Except for the below-specified signs, no sign or unsightly object (including "yard art") may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the board's prior written approval. The board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. The Association may effect the removal of any sign or object that violates this Section or which the board deems inconsistent with neighborhood standards without liability for trespass or any other liability connected with the removal. The following signs are permitted during applicable periods, provided an owner's exercise of this right is not excessive or abusive to the neighborhood:

- a. One professionally made sign of not more than 5 square feet advertising the lot for sale or for rent. During the Development Period, the Declarant and any Builders have special exceptions to these sign provisions as stated in this Declaration. After the Development Period, the sign must conform to any sign specifications maintained by the Association.
- b. One professionally made security service sign of not more than one square foot.
- c. Standard size political yard sign which may be erected no earlier than 6 weeks before an election, and which must be removed within 7 days after the election for which the sign is displayed.
- d. One sign celebrating an event or an accomplishment, such as a baby's arrival or a child's school achievement, provided the sign is tasteful, modest in size, and removed within 7 days after it is erected.
- e. A temporary sign identifying the home as the site of a social event is permitted for 24 hours.

TELEVISION. Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. Antennas, satellite or microwave dishes, and receiving or transmitting towers that are visible from a street or from another lot are prohibited within the Property, except reception-only antennas or satellite dishes designed to receive television broadcast signals, antennas or satellite dishes that are one meter or less in diameter and designed to receive direct broadcast satellite service (DBS), or antennas or satellite dishes that are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multipoint distribution services(MDS) (collectively, the “**Antenna**”) are permitted if located (a) inside the structure (such as in an attic or garage) so as not to be visible from outside the structure, (b) in a fenced yard, or (c) attached to or mounted on the rear wall of a structure below the eaves. If an owner determines that an Antenna cannot be located in compliance with the above guidelines without precluding reception of an acceptable quality signal, the owner may install the Antenna in the least conspicuous location on the lot where an acceptable quality signal can be obtained. The Association may adopt reasonable rules for the location, appearance, camouflaging, installation, maintenance, and use of the Antennas to the extent permitted by public law.

TEMPORARY STRUCTURES. Except for “accessory sheds” as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a lot if visible from a street or another lot. However, an owner or owner’s contractor may maintain temporary structure (such as a portable toilet or construction trailer) on the lot during construction of the dwelling.

TRASH. Each resident will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically by the Association or by the solid waste disposal contractor for that purpose. Trash must be placed entirely within the designated receptacle. The board may adopt, amend, and repeal rules regulating the disposal and removal of trash from the Property. If the rules fail to establish hours for curbside trash containers, the container may be in the designated area from dusk on the evening before trash pick-up day until dusk on the day of trash pick-up. At all other times, trash containers must be kept inside the house, garage, or fenced yard and may not be visible from a street or another lot.

VEHICLES. All vehicles on the Property, whether owned or operated by the residents or their families and guests, are subject to this Section, the sections above pertaining to “Parking” and “Driveways and “Garages,” and rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, conditions, uses, appearances, and locations of vehicles on the Property.

Repairs. Without the board’s prior approval, a driveway or street may not be used for repair or restoration of vehicles.

Storage. Without the board’s prior approval, a driveway or street may not be used for storage purposes, including storage of boats, trailers, and inoperable vehicles. However, if the lot has an alley driveway, one recreational vehicle, boat, camper, or trailer may be parked on the driveway provided the vehicle does not interfere with the use of the alley and is not readily visible from the street.

Towing. The Association may effect the removal of any vehicle in violation of this Section or the Rules without liability to the Association..

Prohibited Vehicles. Without prior written board approval, the following types of vehicles and vehicular equipment – mobile or otherwise – may not be kept, parked, or stored anywhere on the Property – including overnight parking on streets and driveways – if the vehicle is visible from the street: mobile homes, motor homes, buses, trailers, boats, aircraft, inoperable vehicles, commercial truck cabs, trucks with tonnage over one ton, vehicles which are not customary personal passenger vehicles, and any vehicle which the board deems to be a nuisance, unsightly, or inappropriate. This restriction does not apply to vehicles and equipment temporarily on the Property in connection with the construction or maintenance of a dwelling. Vehicles that transport inflammatory or explosive cargo are prohibited from the Property at all times. Recreational Vehicles are permitted in specific neighborhoods as declared and designed by the Declarant.

WATER WELLS. Water wells on house lots are prohibited. On a house lot, underground well water may not be used for any purpose, even non-potable uses such as landscape irrigation.

WINDOW TREATMENTS. All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an owner to change or remove a window treatment that the Architectural Reviewer determines to be inappropriate or unattractive. The Architectural Reviewer may prohibit the use of certain colors or materials for window treatments. Reflective glass, reflective tinting, and reflective film are prohibited. Removal of window mullions must have the prior written approval of the Architectural Reviewer.

YARD ART. The Association is interested in the appearance of yards that are visible from the street and from neighboring homes. Some changes or additions to a yard may defy easy categorization as an improvement, a sign, or landscaping. This Section confirms that all aspects of a visible yard are within the purview of the Architectural Reviewer, including, without limitation, the shape of pruned shrubs; the number, shapes, and uses of flower beds; and the integration of items such as wheelbarrows, boulders, rock covered areas and driftwood into the landscaping.

AFTER RECORDING RETURN TO:

**Rhodes Enterprises, Inc.
14901 N. Ware Road
Edinburg, Texas 78541**