

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE FIELDS SUBDIVISION

This Declaration of Covenants, Conditions, and Restrictions (the "Declaration") is executed to be effective as of the date of the filing of The Fields Subdivision plat (the "Effective Date"), by **KWH EAST, L.L.C.**, a Texas limited liability company (the "Declarant"). Declarant hereby **COVENANTS, AGREES** and **DECLARES** that all of **THE FIELDS SUBDIVISION** is subject to the covenants, conditions, restrictions, easements, charges and liens of this Declaration upon the use, occupancy, and enjoyment thereof.

RECITALS

The Real Property. Declarant is the owner of certain property located in El Paso County, Texas, more particularly described as follows (the "Real Property"):

All of THE FIELDS SUBDIVISION, a subdivision in the City of El Paso, El Paso County, Texas, according to the plat thereof of record as Instrument No. _____, Real Property Records of El Paso County, Texas, consisting of Tract 3A2, Block 3, Upper Valley Surveys, City of El Paso, Real Property Records of El Paso County, Texas.

General Plan and Declaration. Declarant desires to impose a general plan for the benefit of all future owners of lots for the development of the Real Property, for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

The Association. For the efficient preservation of the value and amenities in the Real Property, Declarant deems it desirable to provide for an agency to which will be delegated and assigned the powers of maintaining and administering all Common Areas and amenities, and enforcing and administering the rules, covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created, and therefore, The Fields on Sunset Homeowners' Association, Inc., a nonprofit corporation, has been, or will be, incorporated under the laws of the State of Texas for the purpose of exercising such powers and functions mentioned herein. No more than one such non-profit corporation shall be in existence at any one time.

Beneficiaries. Declarant desires and intends that the owners, mortgagees and other beneficiaries, occupants and all other persons hereinafter designated who acquire any interest in the Real Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote the Real Property.

NOW, THEREFORE, Declarant, for the purposes above set forth, declares that the Real Property described hereafter shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges and rights hereinafter set forth, all of which shall run with and be binding upon the Real Property and all parties having or acquiring any right, title or interest in or to the Real Property, or any part

thereof, and shall inure to the benefit of each owner thereof, the Association and each member of the Association.

1. **DEFINITIONS**

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms should appear throughout this Declaration with the initial letter of such term capitalized.

1.1 "*Architectural Pattern Book*" means the procedures, designs, guidelines, standards and policies adopted by the Declarant which may be amended by the Architectural Review Committee from time to time, governing the construction of External Modifications and such other matters as deemed appropriate by the Architectural Review Committee.

1.2 "*Approved Contractor*" means a general contractor approved by the Declarant and thereafter, the Architectural Review Committee, in accordance with Section 7.11.

1.3 "*Architectural Review Committee*" means the architectural review committee or committees established by the Board (as hereafter defined) pursuant to Section 3.2(e) and Article 8 of this Declaration.

1.4 "*Articles*" means the Articles of Incorporation of the Association, which have been, or will be, filed with the Secretary of State of the State of Texas, as such Articles may be amended from time to time.

1.5 "*Assessments*" means the charges levied and assessed pursuant to Article 5 of this Declaration.

1.6 "*Association*" means *The Fields on Sunset Homeowners' Association, Inc.*, a Texas nonprofit corporation, its successors, assigns or replacements which has jurisdiction over all properties located within the land encumbered under this Declaration, as same may be amended.

1.7 "*Custom Street Light Agreement*" means an agreement between the Association and the City of El Paso pertaining to custom street lighting within the Fields Subdivision.

1.8 "*Association Rules*" means the rules and regulations adopted by the Association pursuant to Section 3.5 of this Declaration, as may be amended from time to time.

1.9 "*Board*" means the Board of Directors of the Association.

1.10 "*Bylaws*" means the Bylaws of the Association (or of any successor thereto) adopted in accordance with the Articles, as such Bylaws may be amended from time to time.

1.11 "*Common Areas*" means the following parts of the Real Property:

- (a) the Medians;
- (b) the Park/Pond;

- (c) the Hike/Bike Trail;
- (d) Green Area along Lazy Willow;
- (e) other areas dedicated in easements granted to the Association or leased from time to time by the Association, for the common use and enjoyment of the Members; and
- (f) the Improvements located on such areas, including without limitation, and by way of example only, the following: the entry way improvements, walls or fences adjacent to any Common Areas and any common facilities within the Project.

On or before the Conversion Date, Declarant shall convey to the Association by Special Warranty Deed Declarant's title to the Medians, the Park/ Pond, the Hike/Bike Trail, Green Area along Lazy Willow and any other Common Areas, free of all liens and encumbrances except current real property taxes (which taxes shall be prorated as of the date of conveyance), and title exceptions of record.

1.12 "*Common Expenses*" means the actual and estimated costs incurred by the Association in administering, maintaining and operating the Common Areas of the Project, including but not limited to, the following:

- (a) maintenance, management, operation, repair and replacement of the Common Areas and all other areas of the Real Property which the Association is entitled or required to maintain, as provided in Section 5.2 hereof;
- (b) unpaid Assessments;
- (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (d) the costs of utilities, trash pickup and disposal, gardening and other services which generally benefit and enhance the value and desirability of the Project;
- (e) the costs of fire, casualty, liability, workmen's compensation and/or other insurance covering the Common Areas;
- (f) the costs of any other insurance obtained by the Association;
- (g) reasonable reserves, as deemed appropriate by the Board;
- (h) the costs of bonding the members of the Board, the Association officers, the professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;
- (k) costs incurred in connection with architectural review or by the Architectural Review Committee or other committees established by the Board;

(l) costs and expenses incurred in connection with the Association's responsibilities and obligations under the Custom Street Light Agreement; and

(m) other expenses incurred by the Association or the costs of any other items provided for by Special Assessments for any reason whatsoever in connection with the Common Areas, or the costs of any other items designated by this Declaration, the Articles, Bylaws, Association Rules or Architectural Pattern Book, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

1.13 "*Conversion Date*" shall have the meaning ascribed to it in Section 4.4(b).

1.14 "*Declarant*" means **KWH East, L.L.C.**, or any Person to whom any part or all of Declarant's rights reserved to the Declarant hereunder are assigned in connection with the sale to the assignee of all or part of the Lots then owned by Declarant to be held for sale to Public Purchasers. The Declarant's rights shall only be assigned by a written instrument recorded in the Real Property Records of El Paso County, Texas, expressly assigning those rights.

1.15 "*Declaration*" means this instrument, as from time to time may be amended.

1.16 "*Default Rate of Interest*" means an annual rate of interest equal to the lesser of eighteen percent (18%) per annum or the highest rate permitted by Texas law.

1.17 "*Dwelling Unit*" means any building or portion of a building situated upon a Lot or Lots designed and intended for use and occupancy as a residence by a Single Family.

1.18 "*Exhibit*" means the documents designated herein and attached hereto and each of which is by this reference incorporated in this Declaration.

1.19 "*Exterior Modifications*" means the placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, improvement, thing or device on any Lot, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Subdivision as of the date of such Exterior Modification, expressly excluding any such matters or activities conducted by the Association as to the Common Area, but including by way of illustration and not of limitation:

(a) any building, garage, porch, shed, greenhouse, bathhouse, coup or cage, covered or uncovered patio, swimming pool, hot tub, sauna, splash pool, satellite dish, fence, wall or other screening device, curbing, paving, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters or any other temporary or permanent modification or alteration, or the change of any exterior color scheme on the exterior of the Dwelling Unit;

(b) an excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the flow of waters to, from, upon or across any Lot or any other portion of the Subdivision;

(c) any change in the grade of any Lot or other portion of the Subdivision, and any similar disturbance to the surface of the land within the Subdivision; and

(d) any erosion control system or devices permitted or required as to any Lot or other portion of the Subdivision.

1.20 "*First Mortgage*" means a Mortgage which has priority over all other Mortgages encumbering a specific Lot.

1.21 "*First Mortgagee*" means a Person, including a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, any federal or state agency, or any other institution regulated by federal or state law. If the First Mortgagee is a Person which is not an institutional lender (which as part of its normal business practice makes residential loans), then such Person shall qualify as a First Mortgagee only if the original loan it makes to an Owner does not exceed 80% of the value of the Residence which is collateral for such loan, as determined by an independent appraisal firm at the time such loan is made.

1.22 "*Improvement(s)*" shall mean each and every physical improvement of any kind whatsoever to any portion of the Real Property, including, but not limited to, the entry way improvements, any excavation, grading, fill work, building, Dwelling Unit, walkway, driveway, road, parking area, wall, fence, swimming pool, utility installation, drainage facility, stairway, patio, courtyard, pole, sign, retaining walls, or landscaping and any and all components of any of the foregoing (including, but not limited to, exterior paint, texture, color and finish scheme) and any and all modifications, alterations of, or additions to, any of the foregoing.

1.23 "*Reserve Deposit*" as defined in Section 5.14.

1.24 "*Landscaping Plan*" means that portion of the plans and specifications for the construction of a Dwelling that contains specific minimum amounts and types of landscaping for the Lot on which the Dwelling is to be constructed.

1.25 "*Lot*" means any parcel of real property designated as a numbered lot on the Plat and any Improvements located thereon, but shall also include any parcel of real property under single ownership consisting of all or portions of two or more contiguous platted lots on which a single Dwelling Unit is or may be constructed with the written approval of the Architectural Review Committee of the Association, but shall not include any of the Common Areas.

1.26 "*Member*" means every Person who qualifies for membership pursuant to Section 4.1 of this Declaration, entitled "*Membership*", including Declarant so long as Declarant qualifies for membership pursuant to said Section.

1.27 "*Mortgage*" means any duly recorded mortgage or deed of trust encumbering a Lot.

1.28 "*Mortgagee*" means the mortgagee or beneficiary under any Mortgage.

1.29 "*Original Plans and Specifications*" means the plans and specifications for the original construction of a Dwelling Unit by an approved contractor, prepared by Declarant or an architect, designer or planner approved by the Declarant, and based upon floor plans, elevations, colors, and building materials approved by the Declarant and selected by an Owner, all of which shall include elements of an English Tudor-Cottage Style, Spanish Revival Style, Craftsman Style or Italianate Style.

1.30 "Owner" means one or more Persons who are alone or collectively the record owner of a fee simple title to a Lot, including Declarant, or the vendee under an installment land sales contract, but excluding those having any such interest merely as security for the performance of an obligation.

1.31 "Park/Pond" means the private park, pond and parking area.

1.32 "Person" means an individual, corporation, partnership, limited liability company, trust or other legal entity, and their respective heirs, successors and assigns.

1.33 "Plat" means the plat of the Subdivision, as hereafter from time to time amended or supplemented.

1.34 "Project" means the Real Property located in El Paso County, Texas, together with all Improvements located thereon or to be located thereon and all easements, rights, and appurtenances belonging thereto.

1.35 "Proportionate Share" means, as to one Lot, a fraction, the numerator of which is one and the denominator is the total number of Lots within the Subdivision, as determined by the Association from time to time. As of the date of this Declaration there are 35 platted lots.

1.36 "Public Purchaser" means a Person who purchases a Lot, and does not include (i) Declarant or any Related Party who acquires a Lot by sale or distribution, or (ii) a Person who acquires title to more than one Lot contemporaneously with the assignment by Declarant to such Person of Declarant's rights reserved in this Declaration, as contemplated under Section 1.14 hereof.

1.37 "Purchaser" means any Person other than Declarant who by means of a voluntary transfer acquires a legal or equitable title to a Lot other than as security for an obligation.

1.38 "Real Property" means all the real property described in the Recitals of this Declaration, and all easements, rights and appurtenances belonging thereto.

1.39 "Related Party" means as of the date hereof any Person owning or holding an interest or position in Declarant.

1.40 "Residence" means any Lot, together with the residential Dwelling Unit, garage, patio and other Improvements thereon and all rights and easements appurtenant thereto granted pursuant to this Declaration and to the deed of conveyance.

1.41 "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their household workers, who maintain a common household.

1.42 "Subdivision" means The Fields Subdivision, a subdivision in the City of El Paso, El Paso County, Texas, according to the subdivision map recorded in the Real Property Records, El Paso County, Texas.

1.43 *"Visible From Neighboring Property"* means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property (which may include a Lot or any portion of the Common Areas) at an elevation no greater than the elevation of the base of the object being viewed.

2. DESCRIPTION OF PROPERTY AND COMMON AREAS SUBJECT TO DECLARATION

2.1 Description of Project. The Project shall be composed of the Real Property, together with all Improvements located thereon or to be located thereon and all easements, rights and appurtenances belonging thereto. Upon conveyance of a Lot to an Owner, the Owner shall have the nonexclusive right to use the Common Areas, subject to this Declaration and to the rules and regulations adopted by the Board.

2.2 Name of Project. The Project shall be referred to as "The Fields."

2.3 No Severance of Residence Estate. No Owner shall be entitled to sever or partition his interest in his Lot from his right and easement to use and enjoy the Common Areas. The right to use the Common Areas as established by this Declaration shall not be separated, severed, partitioned or separately conveyed, encumbered, or otherwise transferred, and such right to use the Common Areas shall conclusively be deemed transferred or encumbered with the Lot to which it is appurtenant even though the description in the instrument of conveyance or encumbrance may refer only to the Lot. Nothing contained in this Article shall be construed to preclude an Owner from creating a cotenancy in the ownership of a Lot with any other Person or Persons.

2.4 Water and Sewer Service Facilities. Declarant is hereby authorized to dedicate easements over the Common Areas not currently shown on the Plat and to convey by fee title such areas of the Common Areas and the Lots owned by Declarant, (i) that the El Paso Water Utilities-Public Service Board (the "PSB") and the other utility companies may require in order for the PSB and such other utilities to furnish water, sewer, electrical, gas and other utility services to the Project or any part thereof, and (ii) as needed to deliver irrigation water to the Common Areas, all without the consent of the Association or any Owner.

2.5 Disclaimer of Representations. **Declarant makes no representations or warranties whatsoever, and specifically disclaims any such representation or warranty, whether written or oral, express or implied, to any Owner or any other Person that the Project or any Improvements will be constructed in accordance with any particular plans and specifications for the Project, including without limitation those plans and specifications which exist on the Effective Date hereof.**

2.6 Park/Pond. The Park/Pond and all recreational equipment and other Improvements on the Park/Pond are part of the Common Areas, and shall be maintained by the Association. During those periods when irrigation water is available, the Park may be flood irrigated by the Association. The Association shall adopt rules to govern the use and operation of the Park/Pond.

2.7. (INTENTIONALLY DELETED)

2.8. Pedestrian and Vehicular Traffic. Each Owner and Member expressly releases and holds Declarant, the Association, and their respective officers, directors and agents, harmless

from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever, arising out of, or related directly or indirectly, to any and all aspects of the Common Areas.

Each Owner and Member will cooperate with Declarant, the Association and the Architectural Review Committee in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Subdivision and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of the Common Areas.

Neither Declarant nor the Association nor any director, officer, agent or employee of Declarant or the Association shall be liable to any Owner or other occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence, maintenance or adequacy of the rules and regulations and their enforcement.

3. THE ASSOCIATION

3.1 General Duties and Powers. In addition to the duties and powers enumerated in its Articles and Bylaws, the Texas Business Organizations Code, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the specific duties and powers specified in this Article.

3.2 General Duties of the Association. The Association, through its Board, shall have the duty and obligation to:

- (a) Enforce the provisions of this Declaration, the Articles, Bylaws, Association Rules and Architectural Pattern Book by appropriate means and carry out the obligations of the Association hereunder.
- (b) Maintain and otherwise manage the following:
 - (i) the Common Areas and all Improvements thereon, in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association;
 - (ii) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association; and
 - (iii) all property, real or personal, which the Association is obligated to repair or maintain pursuant to this Declaration.
- (c) Pay all real and personal property taxes and other charges assessed to or payable by the Association.
- (d) Obtain water, electric, refuse collections and other services for the benefit of the Common Areas.
- (e) Establish an Architectural Review Committee to govern issues set forth in this Declaration as being within the purview of the Architectural Review

Committee as well as other issues the Board deems suitable for the Architectural Review Committee.

(f) Perform its duties and obligations set forth in the Custom Street Light Agreement.

3.3 General Powers of the Association. The Association, through its Board, shall have the power but not the obligation to undertake each of the following:

(a) employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management of residential developments similar to the Project, to perform all or any part of the duties and responsibilities of the Association;

(b) acquire interests in real or personal property for offices or other facilities that may be necessary or convenient for the management of the Project, for the administration of the affairs of the Association or for the benefit of the Members;

(c) borrow money as may be needed in connection with the discharge by the Association of its powers and duties;

(d) provide maintenance of other items to the extent determined desirable by the Board;

(e) negotiate and enter into contracts with First Mortgagees and mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by Mortgages within the Project; and

(f) expend any funds for the installation, construction, reconstruction, repair or replacement of capital improvements to the Common Areas and to comply with the Custom Street Light Agreement, so long as funds are available to the Association from any source, including without limitation the Association's operating account and reserves, and funds from Special Assessments.

3.4 Board. The Association shall initially act through a three-member Board of Directors, which shall manage the affairs of the Association. The initial members of the Board shall be selected by Declarant. Each member of the Board shall serve until his or her successor is elected and qualified as provided in the Bylaws. After the Conversion Date, the Members shall elect one-third of the Board as provided for in the Bylaws; provided, the Declarant shall always have the right to appoint two-thirds of the Board so long as it owns a Lot. Any vacancy, from whatever cause other than removal, occurring in the Board shall be filled by appointment made by the remaining member or members. The person appointed by the remaining member or members of the Board to fill such vacancy shall serve for the remainder of the initial term and until his successor is duly elected and qualified.

3.5 Association Rules. The Board shall be empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (the "Association Rules"), binding upon all Persons subject to this Declaration and governing the use and/or occupancy of the Common Areas or any other part of the Project. The Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters in furtherance of the purposes of the Association,

including, without limitation, the use of the Common Areas; provided, however, that the Association Rules shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be available to each Owner at the principal office of the Association and shall be recorded in the Real Property Records of El Paso County, Texas, and a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be made available to each Owner. The Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and all other Persons having any interest in, or making any use of, the Real Property, whether or not actually received thereby. In the event of any conflict between any provision of the Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws, but only to the extent of any such conflict.

3.6 Indemnification. To the fullest extent permitted by law, the Association shall indemnify and defend the officers, directors and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, and Declarant, including its partners or any Related Party to it (to the extent a claim may be brought against Declarant by reason of its appointment, removal or control of members of the Board), against all expenses and liabilities, including attorneys' fees reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Association (or, in the case of Declarant, by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement thereof, whether or not he is a director, officer or serving in such other specified capacity at the time such expenses are incurred, unless the Board determines, in good faith, that such officer, director, or other person, did not act, fail to act, or refuse to act willfully or with gross negligence or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled in the Articles, at law or otherwise.

3.7 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, the Association, the Architectural Control Committee, any other committees of the Association, nor any director, officer or member of any of the foregoing, shall be liable to any Owner, tenant, the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which Declarant, the Board, or such committees or Persons reasonably believed to be within the scope of their respective duties.

3.8 Easements. In addition to the blanket easements granted in Articles 6 and 9 hereof, and in addition to the rights of the Declarant to grant easements as described in Article 2, the Association is authorized and empowered to grant upon, over, across, through or under Common Areas owned or controlled by the Association such permits, licenses, easements, and rights-of-way for sewer lines, water lines, lines or ditches for irrigation, underground conduits, storm drains, television cable and other similar public or private utility purposes, roadways or other purposes as it may deem reasonably necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners provided that any damage to a Lot resulting from such grant shall be repaired by the Association at its expense.

3.9 Accounting. The Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of Members at reasonable times during regular business hours, such books that shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.10 Records. The Association shall, upon reasonable written requests and during reasonable business hours, make available for inspection by each Member the books, records and financial statements of the Association together with current copies, as amended from time to time, of this Declaration, the Articles, Bylaws and Association Rules, and such other information as is required by Chapter 209 of the Texas Property Code, as may be amended from time to time, subject to the requirements of Chapter 209 of the Texas Property Code. Declarant shall be under no obligation to make its own books and records available for inspection by any Owner, Member, or other Person.

3.11 Delegation of Powers. The Association shall have the right, according to law, to delegate to committees, officers, employees or agents any of its duties and powers under this Declaration, the Articles, Bylaws and Association Rules; provided, however, no such delegation to a professional management company or otherwise shall relieve the Association of its obligation to perform any delegated duty.

3.12 Emergency Powers. The Association or any person authorized by the Association may enter any Lot (other than any Dwelling Unit situated thereon) in the event of any emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association unless covered by insurance carried by the Owner.

4. ASSOCIATION MEMBERS

4.1 Membership. Every Owner shall be a Member of the Association. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Association Rules and Architectural Pattern Book to the extent the provisions thereof are not in conflict with this Declaration. Membership shall be appurtenant to and may not be separated from the interest of the Owner of any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Areas, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules, subject to any limitations set forth in the Texas Property Code. No more than one membership shall exist based upon ownership of a single Dwelling Unit. Each Dwelling Unit shall be entitled to one membership even if the Dwelling Unit encompasses more than one Lot.

4.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except that such membership shall automatically be transferred to the purchaser of the interest of an Owner in a Lot. The Association shall have the right to record the transfer upon the books of the Association without any further action or consent by the transferring Owner. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. To help defray the administrative expenses involved with the transfer of memberships, the Association may assess a transfer fee for every transfer of membership associated with a Lot after the initial transfer of the Lot from the Declarant to the first Public Purchaser. The transfer fee shall be payable by the purchaser of

the Lot being conveyed. The amount of the transfer fee shall be subject to adjustment by the Board of the Association.

4.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules to the extent allowed by law.

4.4 Classes of Voting Rights. The Association shall have two classes of voting membership:

(a) CLASS A. The Class A Members shall be all Owners other than Declarant.

(b) CLASS B. The Class B Member shall be the Declarant.

The period prior to the Conversion Date shall be the Development Period for the purposes of Texas state law. The Conversion Date shall be the first to occur of the following ("Conversion Date"):

(i) One Hundred Twenty (120) days after the Declarant has sold its entire interest (excluding water rights) in 26 Lots (which is 75% of the Lots) to unrelated third parties. A sale to an unrelated third party shall include a sale to joint ventures or partnerships that include Declarant as a co-venturer or partner; or

(ii) Such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant.

Until the Conversion Date, the Class A Members shall not be entitled to vote (except as provided for the levying of Special Assessments under Section 5.5 of this Declaration and any matter affecting the rights and obligations of the Members). Commencing 120 days after the Conversion Date, Class A Members shall be entitled to elect one-third of the Board Members, and the Class B Member shall elect the remaining two-thirds of the Board Members. At such time as the Declarant no longer owns any of the Lots or such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant, the Class B membership shall no longer exist and the Class A Members shall elect the entire Board of Directors. The Class A Members shall have one vote per Dwelling Unit and the Class B Member shall have one vote per Lot.

From and after the Conversion Date (and at any time with respect to votes pertaining to Special Assessments and any matter affecting the rights and obligations of the Members), each Class A Member shall be entitled to one (1) vote for each Dwelling Unit in which it holds the interest required for Association membership. Where more than one person or entity holds such interest in any Lot, all such persons collectively shall be a single Member, and the vote for such Member shall be exercised as the several parties shall determine among themselves, provided, however, that in aggregate no more than one (1) vote shall be cast with respect to each Dwelling Unit.

The Association shall not be a voting member of the Association by virtue of its ownership of any Lot.

4.5 Corporate Membership. If any Lot is owned by a corporation, partnership, trust, or other entity (the "Ownership Entity"), such Ownership Entity shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership. In the absence of such designation and until such designation is made, the chief executive officer, if any, of the Ownership Entity shall have the power to vote the membership, and if there is no chief executive officer, then the board of directors or general partner of such Ownership Entity shall designate who shall have the power to vote the membership.

5. COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation.

(a) Each Owner of a Lot, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association, Annual Assessments, Supplemental Assessments and Special Assessments, such Assessments and other fees to be fixed, established and collected from time to time as provided in this Declaration. Such Assessments and other fees, together with interest thereon, late charges, attorney's fees, court costs, and other costs of collection thereof, shall be a continuing lien upon the Lot against which each such Assessment is made and shall also be the personal obligation of the Owner of such Lot at the time when such Assessment and other fees becomes due. Assessments shall not begin accruing on a Lot until it is conveyed by the Declarant to a Public Purchaser.

(b) Notwithstanding anything contained in Section 5.1(a) to the contrary, no Lot will be subject to any Assessments or other charges under this Declaration until construction of the street up to the boundary line of the Lot, as shown on the Plat, is completed and utilities are installed in the street adjoining such Lot (the "Required Improvements"). Unless the Declarant states in the deed conveying a Lot to an Owner that construction of the Required Improvements have not been completed, by virtue of the conveyance of such title, construction of such Required Improvements shall be deemed complete. If the Required Improvements associated with any Lot have not been completed, Assessments for such Lot shall commence as of the first day of the month following such construction completion date, as designated by Declarant in its written notice to the Owner of such Lot and the Association.

5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for (a) payment of Common Expenses in connection with the upkeep, maintenance and improvement of the Common Areas and such portion of the Lots and the Improvements located thereon as the Association is obligated to maintain under the provisions of this Declaration, and (b) promotion of the health, safety and welfare of the Owners and residents of Dwelling Units within the Real Property.

5.3 Annual Assessments.

(a) Each Owner shall pay, as his Annual Assessment, such Owner's Proportionate Share of the Common Expenses. Payment of Annual

Assessments shall be in such amounts and at such times as may be provided in Section 5.8 of this Declaration.

(b) Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall make available for review by each Owner at the Association's office during reasonable times a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board shall at that time determine the amount of the Annual Assessment to be paid by each Owner for his Lot by determining such Owner's Proportionate Share of the estimated Common Expenses set forth in such budget. The Board shall then notify each Owner of the amount of the Annual Assessment to be paid by such Owner.

(c) If the Board determines during any fiscal year that the total Annual Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Annual Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. If the estimated total Annual Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, reduce the amount of the Annual Assessments for the succeeding year, or abate collection of Annual Assessments for such period as the Board deems appropriate. No reduction or abatement of Annual Assessments because of any such anticipated surplus may diminish the quantity or quality of services upon which the Common Expenses for the year in question are based. The Declarant is not obligated or liable to pay its Proportionate Share, associated with the Lots it owns, of any portion of the budgeted Common Expenses.

(d) For the first fiscal year of the Association, the Declarant shall prepare a budget which shall contain its good faith estimate of the total Annual Assessments for the first fiscal year of the Association. Each Owner is obligated to pay such estimated Annual Assessments, which are subject to adjustment, reduction or abatement by the Board in the manner set forth in Section 5.3(c) hereof.

5.4 Supplemental Assessments. If the Board determines that the funds budgeted or available in any fiscal year are or will become inadequate to meet all expenses of the Association, for any reason, including without limitation, nonpayment of Assessments by the Members, it shall determine the approximate amount of such inadequacies for such fiscal year and prepare a supplemental budget and may levy a Supplemental Assessment against each Lot in such amount as the Board deems necessary in order to obtain the amount of such inadequacies. Notice of any such Supplemental Assessment shall be given to each Owner. The Supplemental Assessment shall be paid on such dates and in such installments as may be determined by the Board.

5.5 Special Assessments.

(a) In addition to the Annual and Supplemental Assessments, the Association may levy, in any assessment year, a Special Assessment applicable only to that fiscal year for the purpose of defraying, in whole or in part, the cost of any installation, construction, reconstruction, repair or replacement of capital improvements of the Common Areas, including fixtures and personal property related thereto, or for any other lawful Association purpose (except for those purposes otherwise described in Section 5.3 and Section 5.4 hereof), in accordance with the following provisions:

(i) Notwithstanding anything contained in this Declaration to the contrary, in no event shall the Declarant be obligated to pay any Special Assessment for any reason whatever.

(ii) Any Special Assessments shall require the consent of (A) the Members having at least sixty percent (60%) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose, and (B) the Declarant so long as it owns at least one Lot.

(iii) Except for a Special Assessment contemplated by Section 5.5(b) below, while the Declarant owns the Class B membership interests, if Declarant on its own motion requests the levy of a Special Assessment, such Assessment shall require the written consent of the Members holding 100% of the votes entitled to be cast by Members (other than the Declarant) who are voting in person or by proxy at a meeting duly called for such purpose. If any Member dissents from Declarant's motion approving such Special Assessments, the other Members are free to authorize such Assessment so long as such other Members, except for the Declarant, agree to pay the dissenting Member's Special Assessment.

(b) A Special Assessment may also be a charge against a particular Owner and his Lot directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, Bylaws, Association Rules and/or Architectural Pattern Book, or any other charge designated as a Special Assessment in this Declaration, the Articles, Bylaws, Association Rules and/or Architectural Pattern Book, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration. A Special Assessment against a particular Owner and his Lot may be perfected by the Association in the manner prescribed in Section 5.9 of this Declaration.

5.6 INTENTIONALLY DELETED

5.7 Uniform Rate of Assessment. Except for Special Assessments levied pursuant to this Declaration with respect to a specific Lot(s) under Section 5.5(b), Assessments must be fixed at a uniform rate for all Lots based upon the Proportionate Share.

5.8 Date of Commencement of Assessments; Due Dates. Except as otherwise provided in Section 5.1(b) hereof, the Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the Lot to the first Public Purchaser. The first Annual Assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the Annual Assessment against each Lot in accordance with Section 5.3(b). Written notice of the Annual Assessment shall be sent to every Owner subject thereto prior to the commencement of the fiscal year; provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. Unless otherwise specified by the Board, Special and Supplemental Assessments shall be due thirty (30) days after they are levied by the Association and notice of the Assessment is sent to each Owner; provided, however, that failure to give such notice shall not affect the validity or enforceability of the Assessments as fixed by the Board. Annual Assessments shall be due in monthly installments or such other periodic basis as may be fixed by the Board. Each installment shall be due and payable on the date set forth in the written notice sent to each Owner. Notwithstanding the foregoing, the Board may require that the Annual, Supplemental or Special Assessments be paid in any number of installments. Assessments are assessed per Lot. For example, if a Dwelling Unit covers two Lots, the Owner shall be liable for Assessments on each Lot.

5.9 Effect of Nonpayment of Assessments. Any Assessment, or any installment of any Assessment, not paid within twenty (20) days after the Assessment, or the installment of the Assessment, first became due, shall be deemed delinquent. Each Owner shall pay a late charge as established by the Board for each delinquent Assessment or installment of an Assessment. Any Assessment, or any installment of any Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (a) the name of the delinquent Owner as shown on the records of the Association, (b) the legal description, street address and number of the Lot against which the claim of lien is made, (c) the amount claimed as of the date of the recording of the notice including interest, collection costs, late charges, lien recording fees and attorneys' fees, and (d) the name and address of the Association. The Association's lien priority shall relate back to the date of recordation of this Declaration and shall have priority over all liens or claims created subsequent, except for tax liens for real property taxes on the Lot, assessments on the Lot in favor of any municipal or other governmental body, and any First Mortgage.

Before recording a lien against any Lot, the Association shall present to the defaulting Owner a written demand for payment. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid or a payment plan is not agreed upon between the Owner and the Association within thirty (30) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent Assessments, interest, lien fees, late charges and attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessment, or any installment of any Assessment, together with interest, late charges, attorneys' fees and any other sums due to the Association in any manner allowed by law or in equity including, but not limited to, (i) suit against the Owner personally obligated to pay the assessment (such action may be brought without waiving any lien securing any such delinquent

Assessment or installment); and/or (ii) foreclosure of the aforesaid lien judicially. The Association shall have the power to bid at a foreclosure sale and to purchase, acquire, hold, mortgage and convey any and all Lots purchased at such sale.

5.10 Subordination of the Lien to Mortgages. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgagee. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure by a First Mortgagee, shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any Assessments thereafter becoming due or from the lien thereof.

5.11 Exemption of Owner. Except as otherwise expressly provided in Section 5.5(a)(iii) hereof, no Owner of a Lot may exempt himself from liability for any Assessment levied against his Lot or for other amounts which he may owe to the Association under this Declaration, the Articles, Bylaws or Association Rules by waiver or non-use of any of the Common Areas or by the abandonment of his Lot.

5.12 Unallocated Tax Assessments. If any taxes are assessed against the personal property of the Association, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, a Supplemental or Special Assessment may be levied against the Lots in an amount equal to said taxes, which Assessment shall be due thirty (30) days before the due date of such taxes.

5.13 Subdivision Information and Resale Certificate. Not later than the 10th day after the date a written request for subdivision information is received from an Owner, Owner's agent or title insurance company or its agent acting on behalf of the Owner, the Association shall deliver to the Owner, Owner's agent or title insurance company or its agent, a current copy of this Declaration, a current copy of the Bylaws and Association Rules, and a resale certificate that complies with the Texas Property Code, as hereafter amended. The Association may charge a reasonable fee (as established by the Board) for providing the information required by this Section.

5.14 Establishment of Reserve Fund. For the purpose of establishing a reserve fund to be utilized by the Association for the periodic maintenance, repair and replacement of Improvements to the Common Areas, upon purchase of a Lot, the Public Purchaser (not Declarant) shall pay to the Association a sum determined by the Association in an amount equal to a percentage of the Annual Assessment then in effect ("Reserve Deposit"), or, if no Annual Assessment is then in effect, then the payment shall be made when the first Annual Assessments are determined as provided in Section 5.3(a) hereof.

6. RIGHTS OF ENJOYMENT

6.1 Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, and such right shall be appurtenant to and shall pass with the fee interest in every Lot, subject to all of the easements, covenants, conditions, restrictions and other provisions of record and as contained in this Declaration, including without limitation, the following:

- (a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas.

(b) The right of the Association to borrow money for the purposes of improving, replacing, restoring or expanding the Common Areas, but not to mortgage the Common Areas, unless the prior affirmative vote or approval of the Members entitled to cast two-thirds of the voting power of the membership has been obtained to mortgage said property, and provided further that the rights of the lender thereunder shall be subordinate to the rights of the Members.

(c) The right of the Declarant and its agents and representatives, in addition to Declarant's rights set forth elsewhere in this Declaration, to the nonexclusive use, without charge, of the Project (except for the Lots owned by Persons other than the Declarant), for display and exhibit purposes, for the maintenance of sales facilities and model homes and for purposes of selling Lots and/or constructing Dwelling Units.

6.2 Delegation of Use. Any Member may delegate his right of enjoyment to the Common Areas to the members of his family or his tenants who reside in his Residence, or to his guests, subject to rules and regulations adopted by the Board.

6.3 Waiver of Use. No Member may exempt himself (and no Member shall be exempt) from personal liability for Assessments or release any Lot owned by him from the liens, charges and other provisions of this Declaration, the Articles, Bylaws, the Association Rules or Architectural Pattern Book, by voluntary waiver of, or suspension or restriction of such Member's right to the use and enjoyment of the Common Areas or the abandonment of such Member's Lot.

6.4 Limitations. An Owner's right and easement of enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot.

7. USE and DESIGN RESTRICTIONS

7.1 Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Project.

7.2 Design of Dwelling Units. Each Dwelling Unit shall be constructed in accordance with the Original Plans and Specifications for that Dwelling Unit. Each Owner is responsible for obtaining approved Original Plans and Specifications prior to commencing construction of the Dwelling Unit on his Lot.

7.3 Dwelling Height. The maximum dwelling height shall be the height limitations prescribed in the applicable municipal ordinances.

7.4 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. Each Residence may be occupied only by a Single Family. It is not the intent of this Declaration to exclude from a Residence any individual who is authorized to remain by any state or federal law. If it is found that this restriction is in violation of any law, then this Section shall be interpreted to be as restrictive as possible to preserve as much of the original Section as allowed by law.

7.5 No Commercial Use. Except for Declarant's use of the Project as provided in Sections 6.1(c) and 7.43 hereof, no business nor business activity, whether for profit or not, shall be permitted in or on any Lot, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a Dwelling Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Real Property; (c) the business activity does not involve visitation of the Dwelling Unit by clients, customers, suppliers or other business invitees in numbers or frequency that would exceed normal household traffic; (d) the business activity does not involve door-to-door solicitation of residents of the Subdivision; and (e) the business activity is consistent with the residential character of the Real Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of The Fields, as may be determined in the sole discretion of the Board. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, barbershop or other similar facility is expressly prohibited.

The terms "business" and "trade" as used in this Section shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods or services for or to other persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time (ii) such activity is intended to or does not generate a profit; or (iii) a license is required therefor. The leasing of the Residence shall be considered a trade or business within the meaning of this Section, and is strictly prohibited; provided, that the Owner may permit the use of his Residence by a third party for short periods of time without charge so long as the Residence remains the primary residence of the Owner and is not the primary residence of the occupant. This Section does not apply to any activity conducted by the Declarant, or by a builder with approval of the Declarant, with respect to its development and sale of the Real Property. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot shall be considered business activity and therefore prohibited.

No business vehicles displaying commercial signs or advertising shall be permitted to be parked within public view in The Fields, other than service vehicles contracted by an Owner to perform specific services. No vehicles with more than two axles shall be permitted to be parked or stored for a period in excess of twenty-four (24) hours in The Fields, without prior written permission of the Association, whose approval may be withheld in its sole and absolute discretion.

7.6 Setbacks and Placement of Residence on Lot. All building setback lines shall comply with the setback requirements set forth on the site plan attached as Exhibit "A", which may not be varied under any circumstance. For the purposes of this Declaration, eaves, steps, and open porches shall not be considered as part of a building, provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. Because the exact placement of the Dwelling Unit on each Lot impacts, among other things, the other residences and the streetscape of the Subdivision, the placement of the Dwelling Unit on each Lot shall be determined by the Declarant and after the Conversion Date, by the Architectural Review Committee.

7.7 Basketball Hoops and Backboards. Basketball hoops and backboards must be on the side of Dwelling Units, on a game court or in the backyard.

7.8 Roofing Material. All original roofing material must be in accordance with the Original Plans and Specifications and all roofing material installed as an Exterior Modification must be a material approved in the Architectural Pattern Book and in a color approved by the Architectural Review Committee.

7.9 Walls, Fences and Hedges. The initial location, height and material of all walls and fences shall be determined by the Declarant. Fences and walls must be of rock or masonry construction matching the exterior wall surrounding the Fields Subdivision, and all side walls must match the rear wall (i.e. be of the same material, color and quality). The outer walls of the Subdivision must be not less than six feet in height. Privacy and view walls shall be as low as possible with a maximum height of six feet in height. Each Owner is responsible for the maintenance of all walls on that Owner's Lot. Any repairs, replacements or changes to the rear wall on each Lot must be consistent with the original wall; that is, the color and appearance of the rear wall may not be changed. No chain link fences shall be permitted, except for temporary fences constructed by the Declarant during construction of Dwelling Units or constructed by an Approved Contractor, with the permission of the Architectural Review Committee, during construction of Exterior Modifications. All Residences shall have backyards enclosed by side and rear walls constructed in accordance with this Section. No Owner shall extend the height of the walls or fences on his Lot without the prior approval of the Architectural Review Committee.

Side walls must be within the property line or may be centered on the property line of the adjoining Lots.

7.10 New and Permanent Construction. All Dwelling Units and other structures on the Real Property shall be of new and permanent construction, and no structure shall be moved from any location on or off the Real Property onto any portion of the Real Property.

7.11 Approved Contractors. Only Approved Contractors are authorized to construct the Dwelling Units, Exterior Modifications and other Improvements on the Lots. Approved Contractors shall be those approved by the Declarant until the first to occur of (i) the Declarant's conveyance of all of the Real Property to Public Purchasers or (ii) Declarant assigns its right to approve contractors to the Association, at which time the Association shall have the right to approve contractors.

7.12 Mechanical Equipment. All HVAC equipment, including evaporative coolers, air conditioning and heating equipment, and ducts, shall be screened from view from the streets. No window air conditioners or heating units are permitted. Irrigation controllers, electric meters and any other mechanical items must not be visible from the street and their exact location must be approved by the Architectural Review Committee in connection with plan review.

7.13 Solar Panels. To the extent allowed by law, the Architectural Review Committee may specify the size and type of solar panels allowed, and the location where they may be installed.

7.14 Planting and Landscaping. All plants, trees and landscaping materials must conform to the Landscaping Plan in the Original Plans and Specifications, unless otherwise approved by the Architectural Control Committee. All plants, trees and landscaping materials on each Lot and within the Common Areas must be from a list or lists of acceptable landscaping plants, trees and materials included in the Architectural Pattern Book. The Architectural Pattern Book may also include a list of plants, trees and landscape materials that may not be planted or

used. Each Owner is responsible for having the minimum amount of required landscaping installed as part of the construction contract for the Dwelling Unit.

7.15 Time for Construction. All exterior construction of each Dwelling Unit and any other appurtenances or appendages of every kind and character on any Lot and all landscaping in front yards and side yards abutting streets shall be fully completed not later than one (1) year following recordation of the deed to the first Public Purchaser, including all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior walls, ceilings, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering).

7.16 Installation of Rear Yard Landscaping Improvements. Within ninety (90) days after the date on which the City of El Paso issues a Certificate of Occupancy for a Dwelling Unit on a Lot, the Owner of the Lot shall install rear yard landscaping conforming to the requirements in the Architectural Pattern Book.

7.17 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will direct light outside the property lines of the Lot, except as may be expressly permitted by the Architectural Control Committee. Light fixtures shall be mounted no higher than the line of the first story eave or, where no eave exists, no higher than twelve feet above finished grade. Lighting of plant materials shall be achieved with hidden light sources. Game court light fixtures must be fully shielded with sharp cut-off lighting. Warm white and natural lamps are preferred.

7.18 Antennae. No television antennae may be erected or maintained on any Lot. No electronic antenna or device of any type, citizen band, HAM, CB, or similar radio antenna or accessory shall be erected or permitted to remain on any Lot. Notwithstanding the foregoing, satellite receiving devices may be placed in a location approved by the Architectural Review Committee, which may require as much screening as possible while not substantially interfering with reception. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. This subpart shall be interpreted to be as restrictive as possible while not violating the Telecommunication Act of 1996, as may be amended from time to time.

7.19 Utility Service. Except as approved in writing by the Architectural Review Committee, no lines, wires, or other devices for the communication or transmission of electronic current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Dwelling Units, Exterior Modifications or other structures approved by the Architectural Review Committee.

7.20 Temporary Structures. No structure of a temporary character, incomplete Dwelling Unit, trailer, or tent, shack, garage or other out-building shall hereafter be used at any time, on any portion of the Real Property for a residence, either temporarily or permanently. Temporary buildings or structures may be used by the Declarant during construction of a Dwelling Unit or may be approved by the Architectural Review Committee at its sole and absolute discretion for use during the construction of Exterior Modifications. If such approval is

granted, the temporary building or structure shall be removed immediately after completion of construction.

7.21 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Dwelling Unit, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Common Areas.

7.22 Signs. No sign of any kind shall be displayed to the public view from any Lot or the Common Areas without the approval of the Association as to size and design, except: (a) such signs as may be used by Declarant in connection with the development and sale of Lots and/or Residences in the Project; (b) such signs as may be required by legal proceedings; (c) such signs as may be required for traffic control and regulation of the Common Areas; or (d) such other signs (including, but not limited to, construction job identification signs, builders' signs, "for sale" signs) as are in conformance with the requirements of the City of El Paso and which have been approved in advance and in writing by the Architectural Review Committee as to size, colors, design, message content, number and location. Signs must be properly mounted and installed. Signs must be able to withstand strong winds and must be replaced promptly if damaged.

7.23 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within each Dwelling Unit.

7.24 Window Covers. All curtains, draperies, blinds or window coverings visible from the exterior of a Dwelling Unit shall be compatible in color and material with the exterior of the Dwelling Unit. No aluminum foil, reflective material, cardboard, sheets, newspaper or other materials not customarily made for use as window covers may be installed or placed upon the inside or outside of any Dwelling Unit or other structure. Exterior awnings, canopies, shutters and similar items may not be installed without prior written approval of the Architectural Review Committee as to color and style.

7.25 Vehicles. All automobiles, vans, pick-up trucks of less than one ton capacity, motorcycles and motor vehicles owned by any Owner, members of such Owner's family, or tenants must be parked in the garage or in the driveway of such Owner's Residence, and no such vehicle may be parked on any portion of the Common Areas where parking spaces are provided, except that authorized persons using the Park may park in the parking spaces at the Park. No mobile home, motor home, trailer, truck with a capacity of one ton or more, camper, boat or other type of recreational vehicle shall be kept, placed, maintained, constructed, reconstructed or repaired within the Project. The provisions of this Section shall not apply to emergency vehicle repairs, periodic social gatherings, the loading or unloading of household articles, or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Review Committee. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Project including the assessment of charges to Owners who violate or whose invitees violate such rules. Any charges so assessed shall be Special Assessments. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law.

7.26 Garages. Each Dwelling Unit shall contain a minimum two car garage, either attached or detached from the rest of the Dwelling Unit. No garage doors shall be permitted to remain open except for a temporary purpose, and the Board may adopt rules for the regulation of the opening of garage doors, including the assessment of charges to Owners who violate or whose tenants or invitees violate such rules. Garage Doors must be of compatible materials with those used in the rest of the Dwelling Unit. Standard metal garage doors are prohibited. Garage doors shall be recessed from the face of the main wall a minimum of 12 inches.

7.27 Animals. No animals, including horses or other domestic farm animals (other than chickens), or poisonous reptiles of any kind, may be kept, bred or maintained on any Lot or in any Dwelling Unit, or in or upon any of the Common Areas, except generally recognized household pets kept in accordance with the Association Rules. No animals shall be kept, bred or raised within the Project for commercial purposes. In no event shall any domestic pet be allowed to run freely outside its owner's Lot without a leash, or so as to create a nuisance. No animals shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized household pet or a nuisance, or whether the number of animals exceeds the maximum number permitted. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained in this Declaration.

7.28 Garbage, Trash, Debris, Hazardous Materials, Mechanical and Service Facilities. No trash, rubbish, hazardous materials, or debris of any kind shall be placed, stored, or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion of the Project unsanitary, unsightly, offensive or detrimental to any other Lot or Common Area in the Project or to the occupants of any Lot. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are provided by the City of El Paso or approved by the Architectural Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the time reasonably necessary to effect such collection. The Board shall have the right, in its sole discretion, to require Owners to place their garbage or trash containers at a specific location for collection or to require Owners to subscribe to a trash collection service. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area, and all garbage containers that are placed at curbside for City collection must be removed by the end of the day of collection. During construction on a Lot, the Owner of such Lot shall provide an enclosed rubbish container for the Lot and shall keep the Lot clean of construction trash at all times. In addition, each Owner shall during construction be responsible to immediately clean up any trash, rubbish, debris, mud and dirt brought or tracked onto the Project in connection with such construction.

7.29 Fires. All outdoor fireplaces, fire pits, and permanent or stationary barbecue pits and grills must be approved by the Architectural Review Committee and must be as generally described in the Architectural Pattern Book. No open fire shall be permitted on the Project, except in approved fire pits.

7.30 Nuisances. Except as expressly provided in this Declaration, no Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Project, which may cause the insurance to be cancelled or the premiums of such insurance to be increased for any Lot or the Common Areas, or which may obstruct or interfere with the rights of

any other Owner, or persons authorized to use and enjoy the Common Areas, or annoy them by unreasonable noises, odors or otherwise, nor will he commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules, and the requirements of all health authorities and other governmental authorities having jurisdiction over the Project. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

7.31 Mining. No portion of the Project shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

7.32 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep his Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or the Common Areas.

7.33 Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of 12 feet, without the prior approval of the Architectural Review Committee.

7.34 Minimum Square Footage. All Dwelling Units must contain a minimum of 2,500 square feet.

7.35 Address Identification. Owners must install address identification. Address numbers must be integrated into walls and must be of materials and colors that harmonize with the home design.

7.36 Colors. Exterior color choices must be approved by the Architectural Review Committee and should be in line with the style and period of the Dwelling Unit.

7.37 Exterior Materials. The exterior of all Dwelling Units must be constructed with one or more of the following materials and no others without the express consent of the Architectural Review Committee: plaster style stucco, wood, natural and/or man-made stone; stone; ceramic tile; brick; and ornamental iron. Standard concrete block may not be used. Accent materials must be approved by the Architectural Review Committee. Roofs may be constructed of concrete or clay roof tiles; built-up roofing (non-reflective) for flat roofs only; shaped tile; metal; single-ply membrane (non-reflective) for semi-flat roof only; copper and no others without the express consent of the Architectural Review Committee.

7.38 Chimneys. Metal flue stacks must be hidden, and the chimney details should match the architectural style of the Dwelling Unit.

7.39 Elevated Decks. Elevated Decks should be of materials compatible with the Dwelling Unit. Support columns must have visual mass and size to give the appearance of substance. Flashing and scuppers to handle drainage should blend with the rest of the Dwelling Unit. Sheet metal must be coated with a non-reflective coating. Wood only decks are prohibited.

7.40 Patio Roofs and Shades. Patio roofs and shades must not appear as additions and must be compatible with the rest of the Dwelling Unit.

7.41 Variances.

(a) Notwithstanding any other provision of this Declaration to the contrary, and subject to the provisions of Section 7.41(b) hereof, which provisions shall govern and control, unless the Architectural Review Committee is given unfettered discretionary authority to grant a variance elsewhere in this Declaration, the Architectural Review Committee may, at its sole option, grant variances from restrictions set forth in the Architectural Pattern Book and Articles 7 and 8 of this Declaration, only if the Architectural Review Committee determines, in its sole discretion:

- (1) That either (A) enforcement of a particular restriction would create a substantial non-economic hardship on an Owner, or (B) a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and
- (2) That the activity permitted under the variance will not have any substantial adverse effect on one or more of the Owners and is consistent with the high quality of life intended for residents of The Fields.

(b) Notwithstanding the provisions of Section 7.41(a) hereof to the contrary, Declarant has the right in its sole discretion to grant any variance whatsoever from the restrictions set forth in the Architectural Pattern Book and Articles 7 and 8 of this Declaration, until Dwelling Units are fully constructed on all Lots as evidenced by the issuance of certificates of occupancy for the original construction of every Dwelling Unit in the Subdivision.

7.42 Further Subdivision. The Declarant shall have the right, in its sole discretion and at any time, to subdivide any Lot and to convey or transfer a portion of any Lot. No Lot, however, shall be further subdivided or separated into smaller lots or parcels by any Owner without the prior written consent of the Declarant for so long as the Declarant owns any of the Lots and thereafter by the Association, which consent may be withheld in its sole discretion.

7.43 Declarant's Exemption. Notwithstanding any other provision of this Declaration, the Articles, Bylaws, Association Rules or Architectural Pattern Book, it shall be expressly permissible for Declarant or its duly authorized agents, employees and representatives to maintain during the period of construction and sale of Lots and/or Dwelling Units such facilities, structures, signs or other sales-related items as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the Lots and/or Dwelling Units, including without limitation, a business office, storage area, construction yards, model units or homes and sales offices; provided, however, that use of the Common Areas by the Declarant must not unreasonably interfere with any Owner's use and enjoyment of the Common Areas.

7.44 Combined Lots. With the approval of the Architectural Review Committee, lots may be combined.

7.45 Enforcement. The Association or its authorized agents may, upon reasonable written notice, enter any Lot in which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may

be imposed pursuant to this Declaration, the Articles, Bylaws, and Association Rules, shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article 5 hereof. All remedies available at law or equity shall be available in the event of any breach of any provision of this Article by any Owner, tenant or other person. The Association shall comply with Chapter 209 of the Texas Property Code to the extent applicable to any enforcement action taken by the Association.

7.46 Additional Restrictions. The Board may adopt additional reasonable restrictions of general application to regulate the use and occupancy of the Project, the Lots and the Residences from time to time which shall be incorporated into the Association Rules, so long as such rules or regulations do not amend this Article 7 or contravene any prior variance or amendment.

8. ARCHITECTURAL REVIEW COMMITTEE

8.1 Establishment and Appointment of Architectural Review Committee. The Architectural Review Committee shall consist of the Declarant only for as long as the Declarant owns at least one Lot and has not relinquished the authority. Thereafter, members of the Architectural Review Committee shall be appointed by the Board. At such time, the Architectural Review Committee shall consist of three members. Persons appointed to the Architectural Review Committee must be Members. The members of the Architectural Review Committee need not be architects, or occupants, and do not need to possess any special qualifications. Architectural Review Committee members shall serve for a term of one year and may be reappointed or reelected; provided that such members may be removed by the Board at any time during their term of office, with or without cause. Upon removal of a member of the Architectural Review Committee, the Board shall appoint a replacement member of the Architectural Review Committee as soon as possible, such that the Architectural Review Committee consists of the minimum number of members designated in this Section.

8.2 Architectural Pattern Book. The Architectural Review Committee shall establish reasonable procedural rules, regulations, restrictions, architectural standards and design guidelines for all Exterior Modifications in an "Architectural Pattern Book" and procedural guideline, which the Architectural Review Committee may, from time to time, amend, subject to the final approval of the Board. So long as the Declarant owns at least one Lot, any such amendment to the Architectural Pattern Book and/or procedural guideline is subject to the approval of the Declarant. The Architectural Pattern Book and procedural guideline shall be binding on Owners, Members, occupants and other Persons as if expressly set forth herein. A copy of the current Architectural Pattern Book and procedural guideline shall at all times be a part of the Association's records. The Architectural Pattern Book and procedural guideline may include, among other things, those restrictions and limitations set forth below:

- (a) Time limitations for the completion, within specified periods after approval, of the Exterior Modifications for which approval is required pursuant to this Declaration.
- (b) Details for assuring conformity of completed Exterior Modifications to the architectural scheme of the Subdivision;
- (c) Such other limitations and restrictions as the Board or Architectural Review Committee in its reasonable discretion shall adopt, including, but not limited to, the regulation of all landscaping (including, but not limited to, absolute prohibitions of certain types of landscaping, trees and plants), and regulation of all Exterior Modifications,

including, but not limited to, the nature, kind, shape, size, height, materials, exterior color, surface texture, and location of any such improvement.

So long as the Declarant owns one Lot, the Declarant reserves the right on behalf of the Architectural Review Committee to designate, hire, or fire outside architectural consultants to review and approve plans and specifications for the construction of Exterior Modifications submitted to the Architectural Review Committee for review and approval.

8.3 Meetings. The Architectural Review Committee shall hold regular meetings. A quorum for such meetings shall consist of a majority of the members, and the affirmative vote of a majority of the members shall be necessary for any decision of the Architectural Review Committee. The Architectural Review Committee shall keep and maintain a record of all actions taken at its meetings.

8.4 General Provisions.

(a) The Architectural Review Committee may assess a fee in connection with its review of plans and specifications.

(b) The Architectural Review Committee may retain architectural consultants to assist in the review of plans and specifications.

(c) The address for the Architectural Review Committee shall be the address established for giving notice to the Association. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Pattern Book shall be kept.

(d) The establishment of the Architectural Review Committee and the procedures herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration, the Bylaws or Association Rules.

(e) The Architectural Review Committee shall approve or disapprove any plans and specifications submitted to it in accordance with this Declaration within such period as may be specified in this Declaration or in the Architectural Pattern Book.

(f) Any consent or approval of the Architectural Review Committee which is required under this Declaration or the Architectural Pattern Book shall not be effective unless it is in writing and signed by the Architectural Review Committee or its authorized representative.

(g) The Architectural Review Committee shall have the right to set time constraints for both the commencement and completion of construction.

8.5 Approval and Conformity of Plans. No Exterior Modification shall be commenced, erected or maintained upon the Real Property or any Lot (other than painting with the same color of paint as previously existed), except in compliance with plans and specifications which have been submitted to and approved by the Architectural Review Committee.

Two complete sets of plans and specifications shall be submitted with each request for approval. Any plans and specifications to be submitted shall specify, in such detail and form as the Architectural Review Committee may reasonably require:

- (i) the location upon the Lot where the Exterior Modification will occur or be placed;
- (ii) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the Exterior Modification;
- (iii) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;
- (iv) intended uses; and
- (v) such other information, plans or specifications as may be requested or required by the Architectural Review Committee which in the sole opinion of the Architectural Review Committee is reasonably necessary to fairly and fully evaluate all aspects of the proposed Exterior Modification.

The Architectural Review Committee shall have the right to refuse to approve any grading plans or plans and specifications which are not suitable or desirable, in its sole opinion, for aesthetic or any other reasons, and in passing upon such grading plans, plans and specifications, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed Exterior Modification, in light of Declarant's development plan for the Project as an exclusive residential development of specially designed homes. No changes or deviations in or from such grading plans and plans and specifications once approved shall be made without the prior written approval of the Architectural Review Committee. Approval of plans and specifications shall not be construed as any representation as to or responsibility for the design of the improvement or the ultimate construction.

8.6 Compensation; Delegations. Unless authorized by the Board, the members of the Architectural Review Committee shall not receive any compensation for services rendered solely as a member of the Architectural Review Committee. If a member of the Architectural Review Committee is a professional consultant retained to assist the Architectural Review Committee, then such member shall be entitled to the fee described in Section 8.4(a). All members of the Architectural Review Committee shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Architectural Review Committee function or duty. Professional consultants retained by the Architectural Review Committee shall be paid such compensation as the Architectural Review Committee determines.

8.7 Non-Liability and Release. **The Association, and its directors, officers and employees; the Declarant, its partners, and the shareholders, officers and directors of any such partner, and any Person who is a Related Party of the Declarant; and any member of the Architectural Review Committee, or any agent, employee or other party providing architectural consulting services to the Architectural Review Committee (the "Released Parties") shall not be liable in damages to anyone submitting plans and specifications for approval by the Architectural Review Committee, any Owner or other person by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans, and each Owner or other person submitting plans agrees, by submission of such plans and**

specifications, that he will not bring any action or suit against any of the Released Parties to recover damages as above described, including, without limitation, to recover damages arising out of or in connection with flooding, natural disaster or soil conditions, or failure to comply with the applicable federal, state and municipal zoning or building ordinances, including without limitation the provisions of the zoning code of the City of El Paso which governs the construction, use, repair and maintenance of Residences (collectively called the "Applicable Laws"). Approval by the Declarant or the Architectural Review Committee shall not be deemed to be a representation or warranty that the Owner's plans and specifications (i) are free from defects (design, construction or otherwise), (ii) are free from hazards, such as flooding, natural disaster or adverse soil conditions, or (iii) comply in whole or part with applicable governmental ordinances or regulations, including, but not limited to, the Applicable Laws. It shall be the sole responsibility of each Owner, or other person submitting plans and specifications to the Architectural Review Committee or performing any construction of a Dwelling Unit or Exterior Modifications to comply with all such ordinances, regulations and codes including without limitation the Applicable Laws. Each Owner understands that due to the location and condition of the Owner's Lot there may be certain inherent risks and specific requirements including, but not limited to, those related to flooding and soil conditions. Each Owner agrees for himself, his family, guests and invitees (the "Releasing Parties") to release the Released Parties, from any and all liability arising from any damage or injury to the person or property of the Releasing Parties arising out of or in connection with each of the aforesaid matters.

8.8 Enforcement. In addition to any other remedies available to the Declarant or the Association, the Architectural Review Committee shall have the authority to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Lot, where such actions have not first been reviewed and approved, or constitute a violation of this Declaration, the Architectural Pattern Book or any other documents promulgated by the Architectural Review Committee. The violating Owner shall remove the violating improvements or site work at his sole expense and without delay, returning the property to its original condition or bringing the Residence into compliance with this Declaration, the Architectural Pattern Book, and any plans and specifications approved by the Architectural Review Committee for construction. If an Owner proceeds with construction that is not approved by the Architectural Review Committee, or that is a variance of the approved plans and specifications, the Association may assess fines and may continue to assess such fines until approval is granted or the violation is removed. This Declaration is notice of an Owner's liability for violation and each Owner hereby agrees to bear the cost and expense to cure any violations according to this provision, regardless of the cost, time or loss of business involved.

9. EASEMENTS.

9.1 Amendment to Eliminate Easements. This Declaration cannot be amended to modify or eliminate the easements reserved to Declarant without prior written approval of Declarant and any attempt to do so shall have no effect. Any attempt to modify or eliminate this Section shall likewise require the prior written approval of Declarant.

9.2 Utility and Irrigation Easements. The Declarant and the Association shall have the right to grant easements across, over and under the Common Areas for ingress, egress, drainage, ponding, and irrigation, and installation, replacing, repairing and maintaining all utilities, including but not limited to, municipal and irrigation water, sewer, natural gas,

telephones, electricity and a cable television system. The easements shall in no way affect any other recorded easements on the Common Areas.

9.3 Easement for Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachments created by construction, settling, overhangs, and discrepancies between the Plat and construction, as originally designed or as constructed by Declarant or its agents or contractors. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event a building containing an encroachment is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Lot due to construction shall be permitted and that a valid easement for said encroachments and maintenance thereof shall exist. Notwithstanding any provisions in this Section to the contrary, any encroachment permitted by this Section shall not exceed one foot.

9.4 Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their families, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the Common Areas, and for vehicular traffic over, through and across such portions of the Common Areas as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Areas.

9.5 Association's Right of Entry. During reasonable hours, the Association, any member of the Architectural Review Committee, any member of the Board or any authorized representative of them, shall have the right to enter upon and inspect any land surrounding any Dwelling Unit on the Real Property (specifically excluding the interior of any Dwelling Unit located thereon) for the purpose of making inspections to determine whether the provisions of this Declaration, the Association Rules and the Architectural Pattern Book are being complied with by the Owner.

9.6 Association's Easement for Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Areas and the Lots for the purpose of repairing, maintaining and replacing the Common Areas and those portions of the Lots which the Association is obligated to maintain.

9.7 INTENTIONALLY DELETED

10. MAINTENANCE

10.1 Maintenance of Common Areas By Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Areas and may, without the approval of any Owner, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any of the Common Areas (to the extent that such work is not done by a government entity, if any, the Association shall be responsible for the maintenance and upkeep of such area);
- (b) Construct, reconstruct, repair, replace or refinish any portion of the Common Areas used as a road, street, walk, driveway or parking area;

(c) Replace injured and diseased trees or other vegetation in any of the Common Areas, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(d) Place and maintain upon any of the Common Areas such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and the beauty thereof, in accordance with the general purposes specified in this Declaration. The Board shall be the sole judge as to the appropriate maintenance of the Common Areas.

10.2 Maintenance of Lots by Owners. Each Owner of a Lot shall be solely responsible for the maintenance of all portions of his Lot. The Owner of each Lot shall at all times perform his obligations under this Section so that the land and Improvements comprising his Residence shall be in good condition and repair. Such obligations of Owners shall include keeping all shrubs, trees, grass, plantings and landscaping of every kind properly cultivated and free of trash, weeds and other unsightly material.

10.3 Damage or Destruction by Owners. Each Owner shall be responsible for the repair or replacement of any damage or destruction to the Common Areas or to any Lot which is caused by such Owner or his family members, guests, invitees, subcontractors, agents or employees, including without limitation, any damage or destruction to concrete, paving or curbing or other Improvements within the Project. In the event such damage or destruction is not immediately repaired or replaced to the satisfaction of the Association, the Association may undertake such repair or replacement, in which case any expenses incurred by the Association in connection therewith shall be paid by said Owner to the Association upon its demand, and such amounts shall be secured by a lien on any Lot(s) owned by such Owner, and the Association may enforce collection of any such amounts in the same manner as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.4 Nonperformance by Owners. If any Owner fails to maintain any portion of the Lot and Improvements comprising his Residence which he is obligated to maintain under the provisions of this Declaration, the Articles, Bylaws, Association Rules or Architectural Pattern Book, then the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by such Owner upon demand from the Association, and such amounts shall be secured by a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.5 Total or Partial Destruction. If any Residence is totally or partially destroyed, the Owner shall either rebuild the Improvements in a timely manner or demolish the same and remove the debris from the Project in a timely manner. If the Owner fails to comply with this Section, the Association may undertake the work on the Owner's behalf and charge the Owner therefor. The amounts expended by the Association shall be secured by a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner

and to the same extent as provided in Article 5 of this Declaration for the collection and enforcement of Assessments.

10.6 Payment of Utility Charges. Each Lot shall be separately metered for water, sewer, cable television, telephone, gas, electrical service, and other utility service, and all charges for such service to the Lot shall be the sole obligation and responsibility of the Owner of each Lot. All bills for utility service to the Common Areas shall be billed to the Association, and the Association shall be responsible for the payment of such charges. The cost of utility service to the Common Areas shall be a common expense of the Association and shall be included in the budget of the Association.

11. INSURANCE

11.1 Scope of Coverage. The Association shall make a good faith effort to obtain and maintain, to the extent reasonably available, the following insurance coverage:

(a) Property insurance on the Common Areas insuring against all risk of direct physical loss, insured in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than 100% of the current replacement cost of the insured property, exclusive of land, excavation, foundations and other items normally excluded from a property policy;

(b) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(c) Worker's compensation insurance to the extent necessary to meet the requirements of the laws of the State of Texas;

(d) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(e) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

- (1) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their households;
- (2) That no act or omission of any Owner (unless acting within the scope of his authority on behalf of the Association) will void the policy or be a condition to recovery on the policy;

- (3) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by the Owners or their Mortgagees;
- (4) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;
- (5) Statement of the name of the insured as "The Fields on Sunset Homeowners' Association, Inc."

11.2 Insurance on Lots. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance or any other type of insurance covering the Lots or the Improvements located thereon. The procurement and maintenance of insurance on each Lot, including all Improvements on such Lot shall be the sole obligation of the Owner thereof. Each Owner shall also be responsible for obtaining all liability insurance, personal property insurance and any other type of insurance to the extent desired by such Owner.

11.3 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, at the requesting party's expense, to any Owner.

11.4 Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, without limitation, any management agent to whom the Association has delegated some or all of the responsibility for the handling of such funds. The total amount of fidelity bond coverage shall be based upon the best business judgment of the Board, and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. In no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months of Annual Assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also:

- (a) Name the Association as an obligee;
- (b) Contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and
- (c) Provide that they may not be cancelled (including cancellation from non-payment of premium) or substantially modified without at least ten (10) days prior written notice to the Association.

11.5 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to Sections 11.1 and 11.4 of this Article shall be included in the budget of the Association and shall be paid by the Association.

11.6 Payment of Insurance Proceeds. With respect to any loss to the Common Areas covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be payable to the

Association. Subject to the provisions of Article 12 of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Areas.

11.7 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Areas in light of increased construction costs, inflation, practice in El Paso County, Texas, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

12. DESTRUCTION OF IMPROVEMENTS

12.1 Duty of Association. In the event of partial or total destruction of Improvements upon the Common Areas, it shall be the duty of the Association to restore and repair the same as promptly as practical pursuant to this Article. The proceeds of any casualty insurance maintained pursuant to this Declaration shall be used for such purpose.

12.2 Automatic Reconstruction. If (a) the amount available from the proceeds of such insurance policies for the restoration and repair of such Improvements are at least 65% of the estimated cost of restoration and repair, or (b) the cost per Lot not covered by insurance proceeds is less than twenty percent (20%) of the Annual Assessment per Lot in effect at the time, a Special Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed Common Area to be restored as closely as practical to its condition prior to the destruction or damage.

12.3 Reconstruction by Vote of Members. If the amount available from the proceeds of such insurance policies for the restoration and repair of such Improvements are (a) less than 65% of the estimated cost of restoration and repair, or (b) greater per Lot than twenty percent (20%) of the Annual Assessment per Lot in effect at the time, the Improvements shall not be replaced or restored unless a majority of the voting power of the Association agrees in writing to such replacement or restoration or gives its affirmative vote at a meeting duly called therefor. If the Members approve such replacement or restoration, the Board shall cause the damaged or destroyed Common Area to be restored as closely as practical to its former condition prior to the destruction or damage.

12.4 Excess Insurance Proceeds. If any excess insurance proceeds remain after any reconstruction by the Association pursuant to this Article, the Board, in its sole discretion, may retain such sums in the general or reserve funds of the Association or distribute pro rata all or a portion thereof to the Members.

12.5 Use of Special Assessments. All amounts collected as Special Assessments pursuant to this Article shall only be used for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

13. EMINENT DOMAIN

13.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation of all or any portion of the Common Areas.

13.2 Representation by Board in Condemnation Proceedings. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board or such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

13.3 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

13.4 Award for Common Areas. Any awards received on account of a taking of any of the Common Areas shall be paid to the Association. The Board may in its sole discretion retain any award in the general or reserve funds of the Association or distribute pro rata all or a portion thereof to the Members.

14. DRAINAGE AND ON-SITE PONDING REQUIREMENTS; CUSTOM STREET LIGHT AGREEMENT

14.1 Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other Improvement or other obstruction (a) which would interrupt the normal drainage of the land, or (b) within any area designated on the Plat (or other binding document) as a "Drainage Easement", except that, with the prior consent of the Architectural Review Committee, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

14.2 On-Site Ponding Requirements. In accordance with the terms of the Subdivision Ordinance of the City of El Paso, and unless otherwise waived by the City of El Paso, the following additional restrictions are placed on the Lots in the Subdivision.

(a) On-site Ponds. The on-site ponds on each Lot shall comply with the specifications approved by the Declarant.

(b) Permanent Elevation Markers. The permanent elevation markers should be placed on each Lot prior to building occupancy. No permanent elevation marker may be moved, covered, or altered, and, without the express consent of the City, no Owner shall fill or change the elevation of his Lot or the pond on the Owner's Lot.

(c) Right of Access. Each Lot is subject to a permanent right of access in favor of the City of El Paso to inspect the ponding area and the permanent elevation markers.

(d) Impairment. The residential on-site ponding on each Lot shall not be impaired, and if the function of the on-site ponding on any Lot is impaired, the Owner shall restore the residential on-site ponding functionality immediately.

(e) Coverage. Without the express consent of the City, no more than fifty percent (50%) of the area of any Lot may ever be covered by improvements of any kind, whether temporary or permanent, which will shed storm waters onto the Lot.

14.3 Waiver. Each Owner of a Lot waives any claim or cause of action against the City of El Paso, its officials or employees, for any death, injury or property damage resulting from alteration of the ponding capacity of his Lot.

14.4 Correction of Drainage Problems. Each Owner of a Lot shall correct any drainage problem on the Lot within forty-five (45) calendar days of the receipt of notice from the City of El Paso.

14.5 Enforcement. The City of El Paso shall have the right to enforce the on-site ponding restrictions on the Lots, by proceedings at law or in equity, and specifically shall have the right to enjoin any violations of the on-site ponding restrictions without any requirement for a bond or other security.

14.6 Deed Requirements. Each deed of a Lot shall declare in conspicuous language that the property conveyed is subject to on-site ponding requirements, maintenance of elevation markers, standing water on the Lot, ingress and egress for inspection, and all other restrictions set forth in this Article 14.

14.7 Custom Street Light Agreement. The Association has entered into an agreement with the City of El Paso pertaining to custom lighting in lieu of traditional street lighting. In connection with the Custom Street Light Agreement, the Association shall indemnify, defend and hold the City of El Paso harmless in certain instances as more fully set forth in the Custom Street Light Agreement; reference is made to the Custom Street Light Agreement for all purposes. The indemnification obligations are covenants running with the Real Property, binding on the successors and assigns of the Association. Additionally, the obligations to install and maintain landscaping improvements and for the payment of related utility costs as set forth in the Custom Street Light Agreement are covenants running with the Real Property and binding on the successors and assigns of the Association; reference being made to the Custom Street Light Agreement for all purposes.

15. GENERAL PROVISIONS

15.1 Enforcement. The Association, the Declarant or any Owner, shall have the right to enforce, by proceedings at law or in equity, all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation. The Association, the Declarant or any Owner, shall also have the right to enforce, by proceedings at law or in equity, the provisions of the Articles or Bylaws and any amendments thereto. With respect to Assessment liens or any other liens or charges and Association Rules, the Association shall have the exclusive right to enforcement thereof.

15.2 No Waiver. Failure by the Association, the Declarant or by any Member, to enforce any covenant, condition, or restriction herein contained, or the Articles, Bylaws, or Association Rules in any certain instance or on any particular occasion shall not be deemed a

waiver of such right on any such future breach of the same or any other covenant, condition or restriction.

15.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, or the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

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

15.5 Violations and Nuisances. Every act or omission whereby any provision of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

15.6 Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

15.7 Joint and Severable Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration shall be joint and several.

15.8 Attorney's Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation or noncompliance with this Declaration, the Articles, Bylaws, Association Rules, and/or Architectural Pattern Book, the Association shall be entitled to recover from the defaulting Member the reasonable attorneys' fees and related costs incurred by the Association in connection therewith.

15.9 Binding Effect. By acceptance of a deed or by acquiring any ownership interest in any Lot subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Project and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the interest of each Owner by virtue of his purchase of a Lot or Residence within the Project (specifically, fee ownership of the Lot or Residence including all rights and easements granted to him by this Declaration and by the deed of conveyance) and the other rights created by this

Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot or Residence even though the description in the instrument of conveyance or encumbrance may refer only to the Lot or Residence.

15.10 Notices. Any notice to be given under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's residence. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners on behalf of all co-owners and shall be deemed delivered to all such co-owners.

(b) Notice to the Association shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows, or to such other address as the Association may designate for itself by like notice:

The Fields Homeowners' Association, Inc.
P.O. Box 12730
El Paso, Texas 79913

(c) Notice to the Declarant shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows, or to such other address as the Declarant may designate for itself by like notice:

KWH EAST, L.L.C.
P.O. Box 12730
El Paso, Texas 79913

(d) Plan delivery to the Architectural Review Committee shall be deemed to have been properly delivered when delivered by email to will@epriverbend.com or delivered personally or placed in the first class United States mail, postage prepaid, addressed as follows, or to such other address as the Architectural Review Committee may designate for itself by like notice:

The Fields
Architectural Review Committee
4798 Doniphan, Suite A
El Paso, Texas 79922

Any of the above notices so deposited in the mail shall be deemed delivered three (3) days after such deposit.

15.11 Leases. No Residence shall be leased for any purpose.

15.12 Construction By Declarant. So long as the exercise by Declarant of its rights in this Section 15.12 do not unreasonably interfere in any material respect with the Members'

rights to use and enjoy the Common Areas, nothing else in this Declaration shall prohibit or limit the right of Declarant at any time so long as it owns one Lot, to establish in the Common Areas or on any Lot prior to the sale thereof by the Declarant to a Public Purchaser any of the following:

- (a) To construct additional Improvements as Declarant deems advisable in the Common Areas or on any Lot prior to the sale of such Lot, including the right to erect, construct and maintain on the Real Property such structures and displays as may be reasonably necessary for the conduct of the business of completing the work and disposing of the same; and
- (b) To grant additional licenses, reservations and rights-of-way in the Common Areas or on any Lot prior to the sale of such Lot, to itself, utility companies or others, as may from time to time be reasonably necessary to the proper development and disposal of the Project; and
- (c) To alter the Architectural Pattern Book for the Project as it deems appropriate.

15.13 Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Review Committee, any committees of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

15.14 Term. The covenants and restrictions of this Declaration shall run with and bind the Project for a term of fifty (50) years from the date this Declaration is recorded. Thereafter they shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members or their proxies casting 67% of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any 10-year extension.

15.15 Amendments. Subject to the other provisions of this Declaration, this Declaration may be amended under the following terms:

- (a) **Association's Right to Amend.** Except as otherwise provided in Sections 15.15(b) and (c), any proposed amendments or modifications to this Declaration (an "Amendment") must be approved by (i) a majority of the Board before its adoption, (ii) not less than 51% of the voting power of the Members, and (iii) the Declarant so long as it owns at least one Lot.
- (b) **Vote Requirement.** Notwithstanding the requirement to obtain the consent of not less than 51% of the voting power of the Members under Section 15.15(a), sixty-seven percent (67%) of the voting power of the Members shall be required for any Amendment which:

- (1) Amends the Plat;

- (2) Changes the right of each Member to cast one vote for each Dwelling Unit which such Owner owns, as provided in Section 4.4; and,
- (3) Changes the uniform rate of Annual or Supplemental Assessments against each Lot which is the Proportionate Share, as provided in Section 5.7.

(c) **Declarant's Right to Amend.** Until Declarant's Class B Membership terminates, the Declarant reserves the right to amend this Declaration without the approval of the Association, the Members, the Owners, or any other Person, except that no such amendment shall have the effect of:

- (1) Changing the Plat of an Owner's Lot without the consent of the Owner thereof; or
- (2) Changing the Proportionate Share of the Owner for the purpose of levying Annual or Supplemental Assessments, as provided in Section 5.7 hereof; and
- (3) Amending provisions of Section 15.15 (b).

(d) **General.** An Amendment that requires the vote and written assent of the Members as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the Amendment has been approved as hereinabove provided, and when recorded in the Real Property Records of El Paso County, Texas. Any Amendment which the Declarant is authorized to adopt as provided in Section 15.15(c) shall be effective when executed by Declarant and when recorded in the Real Property Records of El Paso County, Texas.

15.16 Gender. The singular, wherever used in this Declaration shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

15.17 Section Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Articles, Sections or this Declaration.

15.18 Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with, such membership and the covenants and obligations incident thereto.

15.19 Statutory Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Pattern Book, the provisions of this Declaration shall prevail.

15.20 Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Declarant is hereby authorized and empowered without any further consent on the part of the Association to execute and deliver such letters, documents or other writings as may be required by the Secretary of State of Texas in order for any other corporation formed or incorporated by Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

15.21 Discretion. Whenever the Association or the Architectural Review Committee is given power or authority to make a decision in this Declaration, then, unless otherwise expressly provided in this Declaration, it may do so in its sole and absolute discretion.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first written above.

KWH EAST, L.L.C.
a Texas limited liability company

By: *W. S. Harvey*

Title: *President*

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on December 23 2016, by Will S. Harvey, President of KWH EAST, L.L.C., a Texas limited liability company, on behalf of said limited liability company.



Esther Juarez
Notary Public in and for the State of Texas

Doc# 20170026947
#Pages 43 #NPages 1
4/12/2017 4:05:06 PM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$194.00

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I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



EL PASO COUNTY, TEXAS

Delia Briones

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