

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
THE LOOKOUT

STATE OF TEXAS *

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON *

This Declaration, made on the date hereinafter set forth by PROPERTIES OF THE SOUTHWEST, I.P., a Delaware Limited Partnership, authorized to do business in the State of Texas acting through its General Partner PROPERTIES OF THE SOUTHWEST ONE, INC., a Delaware Corporation, hereinafter referred to as "Developer".

WITNESSETH:

WHEREAS, Developer is the owner of that certain tract of land known as **THE LOOKOUT**, being a subdivision of 503.1092 Acres of land situated in Williamson County, Texas (hereinafter referred to as the "Property" or the "Subdivision") with the plat ("Plat") of THE LOOKOUT, being recorded in the office of the County Clerk of Williamson County, Texas, January 22, 1999, after having been approved as provided by law, and being recorded in Cabinet Q, Slides 288-298 of the Plat Records of Williamson County, Texas.

WHEREAS, it is the desire of Developer to place certain restrictions, easements, covenants, conditions, stipulations and reservations (herein sometimes referred to as the "Restrictions") upon and against THE LOOKOUT in order to establish a uniform plan for its development, improvement and sale, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of tracts in THE LOOKOUT,

NOW, THEREFORE, Developer hereby adopts, establishes and imposes upon THE LOOKOUT, and declares the following reservations, easements, restrictions, covenants and conditions, applicable thereto, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of said property, which Restrictions shall run with said property and title or interest therein, or any part thereof, and shall inure to the benefit of each owner thereof. Developer also declares that THE LOOKOUT shall be subject to the jurisdiction of the "Association" (as hereinafter defined).

ARTICLE I**DEFINITIONS**

Section 1.01 "Association" shall mean and refer to the THE LOOKOUT Property Owners Association, and its successors and assigns.

Section 1.02 "THE LOOKOUT" shall mean and refer to THE LOOKOUT and any other sections of THE LOOKOUT hereafter made subject to the jurisdiction of the Association.

Section 1.03 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.04 "Builders" shall mean and refer to persons or entities that purchase tracts and build speculative or custom homes thereon for third party purchasers.

Section 1.05 "Common Area" shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners.

Section 1.06 "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Tract.

Section 1.07 "Developer" shall mean and refer to Properties of the Southwest, LP and its successors and assigns.

Section 1.08 "Tract" shall mean and refer to any plot of land identified as a tract or home site on the Plat of THE LOOKOUT. For purposes of this instrument, "Tract" shall not be deemed to include any portion of the "Common Areas" or "Unrestricted Reserves", (defined herein as any Common Areas and Unrestricted Reserves shown on the Plat) in THE LOOKOUT, regardless of the use made of such area.

Section 1.09 "Member" shall mean and refer to every person or entity who holds a membership in the Association.

Section 1.10 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Tract which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely a security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DEDICATIONS

Section 2.01 Recorded Subdivision map of the Property. The plat ("Plat") of THE LOOKOUT dedicates for use as such, subject to the limitations as set forth therein, the roads, streets and easements shown thereon. The Plat further establishes certain restrictions applicable to THE LOOKOUT. All dedications, restrictions and reservations created herein or shown on the Plat, replats or amendments of the Plat of THE LOOKOUT recorded or hereafter recorded shall be construed as being included in each contract, deed, or conveyance executed or to be executed by or on behalf of Developer, whether specifically referred to therein or not.

Section 2.02 Easements. Developer reserves for public use the utility easements shown on the Plat or that have been or hereafter may be created by separate instrument recorded in the Real Property Records of Williamson County, Texas, for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, storm surface drainage, cable television, or any other utility the Developer sees fit to install in across and/or under the Property. All utility easements in the Subdivision may be used for the construction of drainage swales in order to provide for improved surface drainage of the Reserves, Common Area and/or Tracts. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Developer, without the joinder of any other Owner, shall have the right to grant such easement on said Property without conflicting with the terms hereof. Any utility company serving the Subdivision shall have the right to enter upon any utility easement for the purpose of installation, repair and maintenance of their respective facilities. Neither Developer nor any utility company, political subdivision or other authorized entity using the easements herein referred to shall be liable for any damages done by them or their assigns, agents, employees, or servants, to fences, shrubbery, trees and lawns or any other property of the Owner on the property covered by said easements.

Section 2.03 Title Subject to Easements. It is expressly agreed and understood that the title conveyed by developer to any of the Tracts by contract deed or other conveyance shall be subject to any easement affecting same for roadways or drainage, electric lighting, electric power, telegraph or telephone purposes and other easements hereafter granted affecting the Tracts. The Owners of the respective Tracts shall not be deemed to own pipes, wires, conduits or other service lines running through their Tracts which are utilized for or service other Tracts, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Tract. The Developer may convey title to said easements to the public, a public utility company or the Association.

Section 2.04 Utility Easements.

(a) Utility ground and aerial easements have been dedicated in accordance with the Plat and by separate recorded easement documents.

(b) No building shall be located over, under, upon or across any portion of any utility easement. The Owner of each Tract shall have the right to construct, keep and maintain concrete drives, fences, and similar improvements across any utility easement, and shall be entitled to cross such easements at all times for purposes of gaining access to and from such Tracts, provided, however, any concrete drive, fence or similar improvement placed upon such Utility Easement by the Owner shall be constructed, maintained and used at Owner's risk and, as such, the Owner of each Tract subject to said Utility Easements shall be responsible for (i) any and all repairs to the concrete drives, fences and similar improvements which cross or are located upon such Utility Easements and (ii) repairing any damage to said improvements caused by the Utility District or any public utility in the course of installing, operating, maintaining, repairing, or removing its facilities located within the Utility Easements.

ARTICLE III

USE RESTRICTIONS

Section 3.01 Single Family Residential Construction. No building shall be erected, altered, placed or permitted to remain on any Tract other than one dwelling unit per each Tract to be used for residential purposes, except that one guest/servants house may be built on any lot that is (3) three acres or larger, provided said guest/servants house must contain a minimum of 500 square feet and not exceed 1000 square feet. Guest/Servants Houses, detached garages, workshops, and barns may not be constructed on the property prior to the main dwelling being built. (i) All dwellings, detached garages, work shops, and barns must be approved in writing by the Architectural Control Committee prior to being erected, altered or placed on property. The term "dwelling" does not include single or doublewide manufactured homes, and said manufactured homes are not permitted within the subdivision. The dwelling on lots 123 through 134 must have at least 2500 square feet of living area, excluding porches, and have at least a (2) two-car garage, which may be detached. Garage Door openings cannot face street lot lines. One and one-half and two story homes must have a minimum of 1500 square feet of living area on the ground floor, excluding porches. The dwellings on lots 120,121,122,135 through 140 & 144 through 168 must have at least 2200 square feet of living area, excluding porches, and have at least (2) two-car garage, which may be detached. Garage Door openings cannot face street lot lines. One and one-half and two story homes must have a minimum of 1300 square feet of living area on the ground floor, excluding porches. All other dwellings must have at least 2000 square feet

of living area, excluding porches, and have at least a (2) two-car garage, which may be detached. Garage Door openings cannot face street lot lines. One and one-half and two story homes must have a minimum of 1200 square feet of living area on the ground floor, excluding porches. The improvements must be built with new construction material, and be built on a concrete slab or on a pier foundation with exteriors being comprised of 90% masonry. All detached garages must be built out of similar materials as the main house. All accessory buildings and barns may be built with new, natural wood products. (No asbestos, plywood, concrete block or vinyl siding). A pier foundation must be constructed with concrete & rebar. A combination of a concrete slab and pier foundation may be utilized in the construction of a dwelling. All foundations must be designed by an engineer. Any building, structure or improvement commenced on any tract shall be completed as to exterior finish and appearance within six (6) months from the commencement date. (ii) No occupied or unoccupied camper, boat or recreation vehicle may be kept on the property, prior to or after construction of a dwelling unless said camper or recreational vehicle is stored in an enclosed garage or structure. Tractor/Trailer rigs and/or trailers and trucks with more than (6) six wheels may not be parked or kept on the property or in the subdivision.

Section 3.02 Composite Building Site. Any Owner of one or more adjoining Tracts (or portions thereof) may, with the prior written approval of the Architectural Control Committee, consolidate such Tracts or portions into one building site, with the privilege of placing or constructing improvements on such resulting site, in which case the side set-back lines shall be measured from the resulting side property lines rather than from the Tract lines as indicated on the Plat.

Section 3.03 Location of the Improvements upon the Tract. No building of any kind shall be located on any five (5) acre or larger tract nearer than twenty-five (25) feet to the side property line or no nearer than one hundred (100) feet to any public road and no nearer than fifty (50) feet to the rear property line; on tracts less than five (5) acres, no building of any kind shall be located on any tract nearer than ten (10) feet to the side property lines; and no nearer than fifty (50) feet to any public road or rear property line, except for creek front lots in which the back set-back line will not apply as to allow building of a house as close to the creek as permitted by County, State and Federal Flood Plain Restrictions and/or Regulations. The maximum height shall be two and one-half stories, but not to exceed thirty-five (35) feet per dwelling. Height of any accessory building shall not exceed twenty-five (25) feet. Provided however, as to any tract, Architectural Control Committee may waive or alter any such setback line or height restriction, if the Architectural Control Committee in the exercise of the Architectural Control Committee sole discretion, such waiver, or alteration is necessary to permit effective utilization of a tract. Any such waiver or alteration must be in writing and recorded in the Deed of Records of Williamson County, Texas. All dwellings placed on Subject Property must be equipped with septic tank or other sewage disposal system meeting all applicable laws, rules, standards and specifications, and all such dwellings must be served with water and electricity.

Section 3.04 Use of Temporary Structures. No structure of a temporary character, whether basement, shack, garage, barn or other outbuilding shall be maintained or used on any Tract at any time as a residence, either temporarily or permanently; provided, however, that Developer reserves the exclusive right to erect, place and maintain such facilities in or upon any portion of the Subdivision as in its sole discretion may be necessary or convenient while selling Tracts, selling or constructing residences and constructing other improvements within the Subdivision.

Section 3.05 Walls and Fences. Walls and fences, if any, must be approved prior to construction by the Architectural Control Committee and shall not be closer to front property lines than the front line of the house on all Tracts except those that front Brushy Creek Trail. Tracts that front Brushy Creek Trail must place the fence along the front property line and said fence must be of the same material and style as the subdivision fence along county road 139 and 198. However, a maximum height of any fence shall be six (6) feet. No barbed, smooth, hog, chicken, chain link or like material/wire fencing is permitted on the property, except on (5) five acre tracts or larger, the rear and side lot lines may be fenced with smooth or barbed wire. All mailboxes must be of masonry construction and approved by the Architectural Control Committee.

Section 3.06 Prohibition of Offensive Activities. No Activity, whether for profit or not, shall be conducted on any Tract which is not related to single family residential purposes, unless said activity meets the following criteria: (a) no additional exterior sign of activity is present, (b) it is the type of action that usually happens in a home, (c) no additional traffic, that would not be there normally, is created, (d) the entity or activity maintains an office or place of business elsewhere, and (e) nothing dangerous is present that shouldn't be there. This restriction is waived in regard to the customary sales activities required to sell homes in the Subdivision. The discharge or use of firearms is expressly prohibited. The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.07 Garbage and Trash Disposal. Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any residence of this Subdivision is or may be created. No Tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be allowed to accumulate, shall be kept in sanitary containers and shall be disposed of regularly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 3.08 Junked Motor Vehicles Prohibited. No Tract shall be used as a depository for abandoned or junked motor vehicles. No junk of any kind or character, dilapidated structure or building of any kind or character, shall be kept on any Tract.

Section 3.09 Signs. No signs, advertisement, billboards or advertising structure of any kind may be erected or maintained on any Tract without the consent in writing of the Architectural Control Committee, except one (1) professionally made sign not more than twenty-four inches (24") wide by thirty inches (30") long advertising an Owner's Tract for sale or rent, and one (1) professionally made sign, not more than twelve inches (12") wide by twenty-four inches (24") long identifying the Tract owner's name or names. During construction of a home a builder may erect one (1) professionally made sign, not more than thirty-six inches wide by thirty-six long for advertising purposes, but shall be required to move said sign upon completion of contracted construction. Declarant or any member of such Committee shall have the right to remove any such sign, advertisement or billboard or structure which is placed on any Tract in violation of these restrictions, and in doing so, shall not be liable, and are hereby expressly relieved from, any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 3.10 Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Tract less than (5) five acres, as shown on the original plat, except for dogs, cats or other common household pets. On tracts (5) five acres or larger, no animals, livestock or poultry of any kind shall be raised, bred or kept on any tract except for dogs, cats or other household pets and (2) two horses per tract. Dogs must be kept in a kennel, dog run, or fenced in area that confines said dog(s) to that area. Dogs will not be permitted to run loose in the Subdivision and must be vaccinated for rabies according to State law once a year and registered with Williamson County once a year.

Section 3.11 Ponds and Dams. One or more ponds and/or dams are located on Lots 1,2,3,4,7,8,9,10,27,38,39,40,41,43,44,45,46,62,63,64,65,66,72,73,74,176,177,184,185,186,198,199. The owners of lots that abutt the ponds may not build any type of pier, floating raft, or any structure into or on the ponds. It is recognized that these ponds and/or dams are to be enjoyed by the multiple owners. Therefore, no owner of a lot may alter or change a pond or a dam in such a way as to materially affect another lot owner without the express written permission of the other affected lot owner. Any change to the pond and/or dam must be approved by the Architectural Control Committee and such Committee shall not approve any change or alteration that, in their sole opinion, would materially affect the other lots unless all affected lot owners have agreed in writing. Any and all debris, of whatever nature, in any pond shall be removed by the owner of the underlying land, if necessary, to: (i) prevent the occurrence of a natural dam that would affect another lot owner or (ii) cause a reduction in the water quality or quantity. The cost of maintaining the pond shall be borne by the lot owner on whose property that portion of the pond is located. The owner of whose lot the dam is located will maintain the dam in its present condition, to the best of the owner's ability and allow access through his property to the dam area, when repair work is necessary. However, if major repair work would be required on a dam, then the cost shall be borne equally by all lot owners that abutt the pond. If a dispute arises as to what is "major repair work" then the Architectural Control Committee will determine if such work is a major repair. Lot owners are responsible for obtaining any necessary governmental approval or licenses relating to the ownership of the ponds and/or dams. The owners of lots 210 through 222 and lots 227,228,229,230 that abutt Lookout Lake may not build any type of pier, floating raft or any structure into or on the Lake. Notwithstanding anything above, the Developer and/or the Property Owner's Association reserves the right to erect or place a fishing/observation deck or floating dock on the lake in "The Lookout Park." Furthermore, the Developer and/or the Property Owner's Association shall have the sole discretion to determine all rules and regulations governing the permitted use of "The Lookout Park", as well as, the permitted use of the surface and shoreline of "The Lookout Lake." The cost of maintaining "The Lookout Lake" (the largest body of water in the subdivision) and/or the dam shall be borne by the Property Owner's Association.

Section 3.12 Mineral Development. No commercial oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Tract. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained or permitted upon any Tract.

Section 3.13 Drainage. Natural established drainage patterns of streets, tracts or roadway ditches will not be impaired by any person or persons. Driveway culverts and/or concrete swales must be installed and will be of sufficient size or design to afford proper drainage of ditches without backing water up into ditch or diverting flow. Drainage culverts and/or concrete swales installation must meet County requirements.

Section 3.14 Antennas. Antennas of any kind shall not exceed ten feet above the roof of the Dwelling or Accessory Building.

Section 3.15 Resubdivision. No lot in this subdivision shall be re-subdivided for the purpose of creating another homesite or building lot.

Section 3.16 Driveways. All driveways must be surfaced with either concrete, concrete pavers, asphalt, (2) two course chip and seal or a combination thereof. Driveway must be surfaced upon completion of the main dwelling unit.

In the event of the failure of Owner to comply with the above requirements after ten (10) days written notice thereof, the Association or their designated agents may, without liability to the Owner, Contractor or any occupants of the Tract in trespass or otherwise, enter upon (and/or authorize one or more others to enter upon) said Tract, cause to be removed, such garbage, trash and rubbish or do any other thing necessary to secure compliance with this Declaration. Payment for the charges shall be payable on the first day of the next calendar month.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE

Section 4.01 Basic Control.

(a) No building or other improvements of any character shall be erected or placed, or the erection or placing thereof commenced or changes made in the design or exterior appearance thereof (excluding, without limitation, painting, staining or siding), or any addition or exterior alteration made thereto after original construction, or demolition or destruction by voluntary action made thereto after original construction, on any Tract in the Subdivision until the obtaining of the necessary approval (as hereinafter provided) from the Committee of the construction plans and specification for the construction or alteration of such improvements or demolition or destruction of existing improvements by voluntary action. Approval shall be granted or withheld based on matters of compliance with the provisions of this instrument.

(b) Each application made to the Committee, or to the Developer, shall be accompanied by two sets of plans and specifications for all proposed construction (initial or alteration) to be done on such Tract, including plot plans showing location on the tract.

Section 4.02 Architectural Control Committee.

(a) The authority to grant or withhold architectural control approval as referred to above is initially vested in the Developer; provided, however, the authority of the Developer shall cease and terminate upon the election of the Architectural Control Committee of the Association (sometimes herein referred to as the "Committee"), in which event such authority shall be vested in and exercised by the Committee (as provided in (b) below), hereinafter referred to, except as to plans and specifications and plot plans theretofore submitted to the Developer which shall continue to exercise such authority over all such plans, specifications and plot plans. *Notwithstanding, after the Control Transfer Date, both the Developer and the Architectural Control Committee shall have the right to grant a variance from the Building set-back line restrictions. Either party may grant this variance, as it determines in its sole discretion is needed, without the consent of the other.* The term "Committee", as used in this Declaration, shall mean or refer to the Developer or to THE LOOKOUT Architectural Control Committee composed of members of the Association, as applicable.

(b) On or after such time as fifty-one percent (51%) of all of the Tracts in all sections of the Subdivision are conveyed by Developer (from time to time hereafter referred to as the "Control Transfer Date"), the Developer shall cause an instrument transferring control to the Association to be placed of record in the Official Public Records of Williamson County, Texas (the effective Control Transfer Date shall be the date of its recording). The Board of Directors of the Property Owners Association of THE LOOKOUT shall be the Architectural Control Committee who shall serve until the next succeeding annual meeting following the Control Transfer Date. From and after the Control Transfer Date, each member of the Committee must be an Owner of Property in some Section of THE LOOKOUT Subdivision. Additionally, the Developer shall have the right to discontinue the exercise of Architectural Control privileges and arrange for the transfer to the Association at any time prior to the Control Transfer Date by filing a statement and instrument to that effect in the Official Public Records of Williamson County, Texas.

Section 4.03 Effect of Inaction. Approval or disapproval as to architectural control matters as set forth in the preceding provisions of this Declaration shall be in writing. In the event that the authority exercising the prerogative of approval or disapproval (whether the Developer or the Committee) fails to approve or disapprove in writing any plans and specifications and plot plans received by it in compliance with the preceding provisions within thirty (30) days following such submissions, such plans and specifications and plot plan shall be deemed approved and the construction of any such building and other improvements may be commenced and proceeded with in compliance with all such plans and specifications and plot plan and all of the other terms and provisions hereof.

Section 4.04 Effect of Approval. The granting of the aforesaid approval (whether in writing or by lapse of time) shall constitute only an expression of opinion by the Committee that the terms and provisions hereof shall be complied with if the building and/or other improvements are erected in accordance with said plans and specifications and plot plan; and such approval shall not constitute any nature of waiver or estoppel either as to the persons expressing such approval or any other person in the event that such building and/or improvements are not constructed in accordance with such plans and specifications and plot plan, but, nevertheless, fail to comply with the provisions hereof. Further, no person exercising any prerogative of approval or disapproval shall incur any liability by reasons of the good faith exercise thereof.

Section 4.05 Variance. The Developer or the Committee, as the case may be, may authorize variances from compliance with any of the provisions of this Declaration or minimum acceptable construction standards or regulations and requirements as promulgated from time to time by the Developer or the Committee, when circumstances such as topography, natural obstructions, Tract configuration, Tract size, hardship, aesthetic or environmental considerations require a variance. The Developer and the Committee reserve the right to grant variances as to building set-back lines. Such variances must be evidenced in writing and shall become effective when signed by the Developer or by at least a majority of the members of the Committee. If any such variances are granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance is granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular

provisions hereof covered by the variance, nor shall the granting of any variance effect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned and the Plat.

ARTICLE V

THE LOOKOUT RANCH PROPERTY OWNERS ASSOCIATION

Section 5.01 Membership. Every person or entity who is a record owner of any Tract, which is, subject to the Maintenance charge (or could be following the withdrawal of an exemption therefrom) and other assessments provided herein, shall be a "Member" of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation or those having only an interest in the mineral estate. No Owner shall have more than one membership for each Tract owned by such Member. Memberships shall be appurtenant to and may not be separated from the ownership of the Tracts. Regardless of the number of persons who may own a Tract (such as husband and wife, or joint tenants, etc.) there shall be but one membership for each Tract. Additionally, the Directors of the Association must be Members of the Association (as more particularly described in the By-laws). Ownership of the Tracts shall be the sole qualification for membership. The voting rights of the Members are set forth in the Bylaws of the Association. However, the restrictive covenants will not be construed as to assess the Veterans Land Board or the State of Texas. Any assessments are the personal obligation of the Veteran purchaser, his successors, heirs and assigns. Any lien imposed by the restrictive covenants does not affect the Veterans Land Board's interest in the property.

Section 5.02 Non-Profit Corporation. THE LOOKOUT Property Owners Association, Inc., a non-profit corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

Section 5.03 Bylaws. The Association has adopted or may adopt whatever Bylaws it may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Tracts and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

Section 5.04 Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Tract, subject to the following provisions:

- (a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;
- (b) the right of the Association, in accordance with its Articles and Bylaws (and until 51% of all tracts in the Subdivision are sold, subject to the prior written approval of the Developer), to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;
- (c) the right of the Association to suspend the Member's voting rights and the Member's and "Related Users" (as hereinafter defined) right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Tract remains unpaid;
- (d) The right of the Association to suspend the Member's voting rights and the Member's and Related Users' right to use any recreational facilities within the Common Area, after notice and hearing by the Board of Directors, for the infraction or violation by such Member or Related Users of this Declaration or the "Rules and Regulations", as hereinafter defined, which suspension shall continue for the duration of such infraction or violation, plus a period not to exceed sixty (60) days following the cessation or curing of such infraction or violation.

ARTICLE VI

MAINTENANCE FUND

Section 6.01 Maintenance Fund Obligation. Each Owner of a tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association a monthly maintenance charge (the "Maintenance Charge"), and any other assessments or charges hereby levied. The Maintenance Charge and any other assessments or charges hereby levied, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Tracts and shall be a continuing lien upon the property against which each such Maintenance Charge and other charges and assessments are made.

Section 6.02 Basis of the Maintenance Charge.

- (a) The Maintenance Charge referred to shall be used to create a fund to be known as the "Maintenance Fund", which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Tract (or residential building site) to the

Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Provided, however if such owner owns more than one tract in the subdivision, such Owner shall pay only twice the assessment of one (1) tract no matter how many tracts are owned or in the event as Owner obtains consent from the Committee for a Composite Building site pursuant to Section 3.02 hereof, such Composite Building Site shall be considered for the Maintenance Charge of one Tract for beginning upon the completion of the improvements thereon.

(b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Tract. No Owner may waive or otherwise escape liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Tract.

(c) The initial amount of the Maintenance Charge applicable to each Tract will be determined by the Developer. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be determined by the Developer or the Board of Directors of the Association, subject to the provision hereof.

(d) The Association, from and after the Control Transfer Date, shall have the further right at any time, with a majority vote of all association members, to adjust or alter said Maintenance Charge from year to year as it deems proper to meet the reasonable operating expenses and reserve requirements of the Association in order for the Association to carry out its duties hereunder.

Section 6.03 Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Tract in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Tract which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-President of the Association and file for record in the Real Property Records of Williamson County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by Association, Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Tract to the highest bidder for cash by the General Warranty Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Tract foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of a writ of restitution thereunder.

In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such nonpaying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 6.03 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Williamson County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

Section 6.04 Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim of lien against the Tract of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Tract against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a

reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

Section 6.05 Liens Subordinate to Mortgages. The lien described in Section 6.01 hereof shall be deemed subordinate to a first lien granted by Developer on the Property or any part thereof to any lender and to each and every lien of Developer, any bank, insurance company, savings and loan association, university, pension and profit sharing trust or plans, or any other third party lender, which may have heretofore or may hereafter lend money or extended credit in good faith for the acquisition or improvement of the Property or any part thereof, including without limitation, any one or more Tract(s), and any renewal, extension, rearrangement or refinancing of such acquisition or improvement costs. Each such lienholder who obtains title to any portion of the Property encumbered by its lien pursuant to the remedies provided in the deed of trust or mortgage granting the lien or by judicial foreclosure of the lien shall take title to said Property free and clear of any claims for unpaid Maintenance Charges or other charges or assessments against such Property which accrued prior to the time such holder acquired title to such Property. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessments accruing thereafter or from the lien described in Section 6.01 hereof on account thereof. Any other sale or transfer of the Property shall not affect the Association's lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such lienholder having a lien on any portion of the Property to be foreclosed sixty (60) days advance written notice of the Association's proposed foreclosure of the lien described in Section 6.01 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based, provided, however, the Association's failure to give such notice shall not invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article VI.

Section 6.06 Purpose of the Maintenance Charges. The maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties described in Article VIII, including the maintenance of any Common Areas, any Drainage Easements and the establishment and maintenance of a reserve fund for maintenance of any Common Areas. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

Section 6.07 Handling of Maintenance Charges. The collection and management of the Maintenance Charge or other charge or assessment levied hereunder, shall be performed by the Developer until the Control Transfer Date, at which time the Developer shall deliver to the Association all funds on hand together with all books and records of receipt and disbursements. The Developer and, upon transfer, the Association, shall maintain separate special accounts for these funds, and Owners shall be provided at least annually information on the Maintenance Fund.

ARTICLE VII

DEVELOPER'S RIGHTS AND RESERVATIONS

Section 7.01 Period of Developer's Rights and Reservations. Developer shall have, retain and reserve certain rights as set forth in this declaration with respect to the Association and the Common Area from the date hereof, until the earlier to occur of (i) the Control Transfer Date or (ii) Developer's written notice to the Association of Developer's termination of the rights described in Article VII hereof. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of a Tract by Developer to an Owner whether or not specifically stated therein and in each deed or other instrument by which any property within the Common Area is conveyed by Developer. The rights, reservations and easements hereafter set forth shall be prior and superior to any other provisions of this Declaration and may not, without Developer's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration. Developer's consent to any one such amendment shall not be construed as a consent to any other or subsequent amendment.

Section 7.02 Right to Construct Additional Improvements in Common Area. Developer shall have and hereby reserves the right (without the consent of any other Owner), but shall not be obligated to construct additional improvements within the common Area at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners, so long as such construction does not directly result in the increase of such Maintenance Charge. Developer shall, upon the Control Transfer Date, convey or transfer such improvements to the Association and the Association shall be obligated to accept title to care for and maintain the same as elsewhere provided in this Declaration.

Section 7.03 Developer's Rights to Use Common Areas in Promotion and Marketing of the Property. Developer shall have and hereby reserves the right to reasonable use of the Common Area and of services offered by the Association in connection with the promotion and marketing of land within the boundaries of the Property.

