

STEWART TITLE CO. 98200216 Jpl/ah  
Unit 41

GAC 9919024 28 PGS

013-50-1880

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

STEWART TITLE HOUSTON DIVISION

FOR

COPY

**THE LAKES IN BAY COLONY, SECTION ONE**

(A RESIDENTIAL COMMUNITY)

THE STATE OF TEXAS       §  
  §  
COUNTY OF GALVESTON   §

THIS DECLARATION is made on the date hereinafter set forth by BAY COLONY LAKES, L.P., a Texas limited partnership (hereinafter referred to as "Declarant").

**Whereas**, Declarant is the owner of certain real property (the surface estate of which is hereinafter called and referred to as the "Property" or "Lakes in Bay Colony"), heretofore subdivided into that certain subdivision known as THE LAKES IN BAY COLONY, SECTION ONE, as reflected on the plats recorded in Plat Record 18, Maps 818 and 819, of the Map Records of Galveston County, Texas (the "Subdivision Plat"), to which recorded Subdivision Plat reference is hereby made for all purposes; and

**Whereas**, the Property is within the area known as Bay Colony in Galveston County, Texas and is subject to certain existing covenants set forth in the instrument recorded under Clerk's File No. 8548877 of the Real Property records of Galveston County, Texas; and

**Whereas**, Declarant desires to hold, sell and convey the Property as described on the Subdivision Plat, subject to the following covenants, restrictions, reservations, and easements, which are for the purpose of establishing a uniform plan for the development, improvement and sale of said property, and to insure the preservation of such uniform plan for the benefit of both present and future owners of the lots within said property.

Now, Therefore, Declarant hereby adopts the following conditions, covenants and restrictions which create a comprehensive plan for the purpose and intent of enhancing and protecting the value, desirability, and attractiveness of said property through the uniform applicability of said plan to all lots in said property and which shall be applicable to the lots in said property, shall run with the land, shall bind all parties having or acquiring any right, title or interest therein or any part thereof, shall inure to the benefit of each owner thereof, and shall be liberally construed to give effect to the purposes and intent of the said plan and each condition, covenant and restriction contained herein.

RETURN TO: JIM PUTNAM  
STEWART TITLE HOUSTON  
P. O. BOX 1504  
HOUSTON, TEXAS 77251-1504

**ARTICLE I****DEFINITIONS**

**Section 1.** "Association" shall mean and refer to **THE LAKES IN BAY COLONY HOMEOWNERS' ASSOCIATION, INC.**, a Non-Profit Corporation incorporated under the laws of the State of Texas, its successors and assigns, as set forth in Article II of this Declaration.

**Section 2.** "Property" or "Properties" shall mean and refer to the tract of land hereinabove referred to as **THE LAKES IN BAY COLONY, SECTION ONE**. Furthermore, "Property" or "Properties" may also include any additional tracts or parcels of land as may hereafter be brought within the jurisdiction of the Association.

**Section 3.** "Lot" shall mean and refer both to each plot of land located in the Property as shown on the Subdivision Plat upon which there has been or will be constructed a single-family residence, and to the residence and improvements constructed or to be constructed thereon, but shall not mean or include any common area. If building sites are created pursuant to Article IX, Section 8 and 9 herein, the term "Lot" shall also thereafter mean and refer to any building site so created.

**Section 4.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to the surface estate in any Lot or tract of land which is part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 5.** "Common Properties" shall mean and refer to all those areas of land within the Properties as shown on the Subdivision Plat, except the Lots and the public streets shown thereon, together with such other property as the Association may, at any time and from time to time, acquire by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications and reservations applicable thereto by virtue hereof and/or by virtue of the Subdivision Plat, and/or by virtue of prior grants or dedications by Declarant or Declarant's predecessors in title. References herein to "the Common Properties" shall mean and refer to Common Properties as defined respectively in The Declaration and all Supplemental Declarations.

**Section 6.** "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Properties, except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of the Owners of the lots in the Properties, as well as other Owners in the subdivision, constructed on portions of one or more lots or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of The Declaration. By way of illustration, Common Facilities may include, but are not necessarily limited to, the following: structures for recreation, storage or protection of equipment; fountains, statuary; sidewalks; common driveways;

landscaping; and other similar and appurtenant improvements. References herein to "the Common Facilities" (or any "Common Facility") shall mean and refer to Common Facilities as herein defined and in all Supplemental Declarations.

**Section 7.** "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions bringing additional property within the scheme of this Declaration under the authority provided in this Declaration. References herein (whether specific or general) to provisions set forth in "all (any) Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental Declarations.

**Section 8.** "Easements" shall mean and refer to the various utility or other easements of record, those shown on the Subdivision Plat and such other easements as are created or referred to in this Declaration.

**Section 9.** "The Declaration" shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

**Section 10.** "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

**Section 11.** "Member" shall mean and refer to every person or entity who holds membership in the Association.

**Section 12.** "Conveyance" shall mean and refer to conveyance of a fee simple title to a Lot.

**Section 13.** "Declarant" shall mean and refer to BAY COLONY LAKES, L.P., the Declarant herein, its successors and assigns (i) if such successors or assigns should acquire more than one Lot from BAY COLONY LAKES, L.P., and (ii) if such successors or assigns are designated in writing by BAY COLONY LAKES, L.P. as a successors or assignee of all or part of the rights of BAY COLONY LAKES, L.P. set forth in this Declaration.

**Section 14.** "Assessable Lot" shall mean and refer to any Lot to which paved public street access and water and sanitary sewer services have been extended, and which has been rough graded and staked, which Lot shall be subject to the Assessments referred to in Article III from and after the date on which title is conveyed by Declarant to any other person or entity, other than a successor declarant as defined in Section 13 above.

**Section 15.** "FHA" shall mean and refer to the Federal Housing Administration.

**Section 16.** "VA" shall mean and refer to the Veterans Administration.

**Section 17.** "Living Unit" shall mean and refer to any improvements on a Lot which are designed and intended for occupancy and use as a residence by one person, by a single family, or by persons maintaining a common household.

## ARTICLE II

### THE LAKES IN BAY COLONY HOMEOWNERS' ASSOCIATION, INC.

**Section 1. Intent.** It is the intent of the Declarant that the Association shall be formed and shall continue to exist throughout the term of this Declaration. The Association shall exercise all powers and duties as set forth in this Declaration, the By-Laws of the Association, and as provided for by the laws of the State of Texas. The Association shall consist of a body of members hereinafter defined. The Board shall be the governing body for the Association.

**Section 2. Duties and Powers.** In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality hereof, the Association shall also discharge those functions necessary to the general maintenance of the Properties. The Board of Directors of the Association shall be empowered to oversee the activities of the Association to such an extent as they may take whatever action they, in their sole discretion, deem necessary to provide for the upkeep and aesthetic appearance of the Properties for the common benefit of all the members of the Association.

**Section 3. Membership.** Every person or entity who is a record Owner of any of the Properties shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association.

**Section 4. Additional Property.** Other lands may hereafter be annexed into the jurisdiction of the Association in the manner herein described. If annexed, the Owner of Lots in each future section so annexed, as well as all Owners subject to the jurisdiction of the Association, shall be entitled to the use and benefit of all Common Properties that may become subject to the jurisdiction of the Association as a result of such annexation, and the facilities thereon, and shall be entitled to the use and benefit of the maintenance fund, hereinafter set forth, provided that each future section must be impressed with and subject to the annual maintenance charge imposed hereby, and further, such sections shall be made by recorded restrictions subject to the jurisdiction of the Association. Such additional stages of development may be annexed in accordance with the provisions of Article IX, Section 6, hereinbelow.

**Section 5. Merger or Consolidation.** Upon a merger or consolidation of the Association with another Association, the Association's Properties, rights and obligations

may be transferred to another surviving or consolidated Association, or alternatively, the properties, rights, and obligations of another Association may be added to the Properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association shall administer the Covenants and Restrictions established by this Declaration, together with the Covenants and Restrictions applicable to the properties of the other Association as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the Covenants established by this Declaration.

**Section 6. Membership and Voting.** The Association shall have two (2) classes of voting membership:

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

**Class B.** Class B members shall be the Declarant herein, as such term is defined in Article I, Section 13 hereof, who shall be entitled to three (3) votes for each Lot owned. The Class B membership (Declarant's weighted vote) ceases and converts to Class A membership upon the earlier of the following:

- (A) Seventy-five percent (75%) of the Lots are deeded to Owners; or
- (B) On January 1, 2010.

**Section 7. Non-Profit Corporation.** THE LAKES IN BAY COLONY HOMEOWNERS' ASSOCIATION, INC., a Texas non-profit corporation, has been or will be organized, and all duties, obligations, benefits, liens, and rights hereunder in favor of the Association shall vest in said corporation. In the event that THE LAKES IN BAY COLONY HOMEOWNERS' ASSOCIATION, INC. or any successor entity acting hereunder ceases to exist as a legal entity, the members of the Board at the time of such occurrence or their successors elected in the manner provided in the By-Laws adopted by the Association are authorized and empowered to form a new non-profit corporation to succeed to and exercise the powers, duties, obligations, benefits, liens and rights of the Association under this Declaration.

**Section 8. By-Laws.** The Association may make whatever rules or by-laws it may choose to govern the organization, provided that same are not in conflict with the terms and provisions hereof.

**Section 9. Members' Easement of Enjoyment.** Subject to the provisions of Section 10 below, every Member shall have a common right and easement of enjoyment

in the Common Properties, and such right and easement shall be appurtenant to and shall pass with the title to every Assessable Lot.

**Section 10. Extent of Members' Easements.** The rights and easements of enjoyment created hereby in favor of the Members shall be subject to the rights and easements now existing or hereafter created in favor of Declarant or others as referred to or provided for in this Declaration, and shall also be subject to the following provisions:

- (a) The Association shall have the right to borrow money and, with the consent of Members entitled to cast not less than two-thirds (2/3) of the aggregate of the votes of both Classes of Members, to mortgage the Common Properties.
- (b) The Association shall have the right to take such steps as are reasonably necessary to protect the Common Properties against foreclosure of any such mortgage.
- (c) The Association shall have the right to suspend the enjoyment rights of any Member for any period during which any assessment or other amount owed by such Member to the Association remains unpaid.
- (d) The Association shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Properties, and to suspend the enjoyment rights of any Member for any period not to exceed sixty (60) days for any infraction of such rules and regulations.
- (e) The Association shall have the right to assess and collect the assessments provided for herein and to charge reasonable admission and other fees for the use of any recreational facilities which are a part of the Common Properties.
- (f) The right of resident owners or occupants of dwellings within any area owned by Declarant as of the date hereof and in the vicinity of the Property, to use the Common Properties, together with all facilities now or hereafter located thereon.
- (g) The exclusive right of Declarant and its permittees to erect, place and maintain in the Common Properties, in such locations as shall be approved by the Architectural Control Committee (which approval may not be unreasonably withheld), such facilities (including but not limited to, sales or other offices, storage areas, model units, flags and signs) as in Declarant's sole discretion may be necessary or convenient to improve and/or sell Lots in the Property.

- (h) The Association shall have the right to dedicate or convey all or any part of the Common Properties, or interests therein, to any public authority for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or conveyance shall be effective unless an instrument agreeing to such dedication or conveyance signed by Members entitled to cast not less than two-thirds (2/3) of the aggregate of the votes of both Classes of Members had been recorded.
- (i) The Association shall have the right to rent or lease any part of the Common Properties for the operation (for profit or otherwise) of any service activity intended to serve a substantial number of residents in the Properties, such as, but not limited to, child care nurseries, with the consent of Members entitled to cast not less than two-thirds (2/3) of the aggregate of the votes of both Classes of Members voting in person or by proxy, at a meeting duly called for this purpose.
- (j) The Association shall have the right, but not the obligation, to contract on behalf of all Assessable Lots which have or have had Living Units thereon occupied as residence, for garbage and rubbish pickup, and to charge the Owner of each such Assessable Lot for his pro rata share of the cost thereof, such pro rata share to be determined by dividing the number of such Assessable Lots being served into the total cost of providing such garbage and rubbish pickup. If the Association so elects, the charge to each Owner for garbage and rubbish pickup shall be in addition to the assessments described in Article III hereof.
- (k) The Association shall have the right to exercise all other rights and powers granted to property owners' associations by law in the State of Texas.

### ARTICLE III

#### COVENANTS FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Building Plot owned within the Properties, hereby covenants, and each Owner of any Building Plot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges, and (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, and the cost, including reasonable attorney's fees, of the enforcement of any provision of this Declaration against the Owner of any Lot shall be a charge on the land and shall be secured by a continued Vendor's Lien with power of sale upon the Property against which each such assessment is made or enforcement action brought. Each such assessment,

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

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to improve, beautify, maintain, manage and operate the Common Properties, and to pay taxes and insurance premiums thereon, and to promote the recreation, health, safety, convenience, and welfare of the Members, such benefits to include, by way of illustration but not limitation, providing patrol or watchman service, fogging for insect control, enforcing the provisions contained in this Declaration, employing at the request of the Architectural Control Committee one or more architects, engineers, attorneys, or other consultants, for the purpose of advising such Committee in carrying out its duties and authority as deemed appropriate in the opinion the Board of Directors of the Association, for the maintenance and/or improvement of the Common Properties or for the benefit of the Members, the foregoing uses and purposes being permissive and not mandatory, and the decisions of the Board of Directors of the Association being final as long as made in good faith and in accordance with the By-Laws of the Association and governmental laws, rules and regulations.

**Section 3. Annual Assessments.** The Association, by action of its Board of Directors, shall levy annual assessments against the Assessable Lots to obtain funds (herein called the "maintenance fund") reasonably anticipated to be needed for the purpose stated in Section 2 hereinabove, including reasonable reserves for contingencies and for capital improvements, replacements, and repairs; provided, the annual assessments shall be levied on a uniform basis as follows:

- (a) The amount of the annual assessment for a Lot which has or has had a Living Unit thereon occupied as a residence shall not exceed ONE HUNDRED AND NO/100 DOLLARS (\$100.00), except that for any calendar year after the calendar year 1999, the Association may increase said maximum amount of the annual assessment for an Assessable Lot, but if any such change increases the maximum amount which can be assessed against an Assessable Lot to more than 115% of the maximum amount which could have been assessed by the Association in the preceding calendar year including cumulatively all increases in the amount of assessment of any years in which the assessment was not increased, the change must be approved by Members entitled to cast not less than two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting called for this purpose at which a quorum is present or represented. The amount actually assessed against an Assessable Lot for any calendar year is referred to in sub-section (b) below as the "Base Assessment Sum" for such year.

- (b) No assessment shall be due from or assessed against any Lot until it becomes an Assessable Lot, as defined in Article I, Section 14 hereof.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 3 hereinabove, the Association may levy against the Assessable Lots in any calendar year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, purchase, acquisition, repair, or replacement of a capital improvement of the Association, including necessary fixtures and personal property related thereto, but any such assessment must be approved by Members entitled to cast not less than two-thirds (2/3) of the votes of the Members, present in person or by proxy, at a meeting called for this purpose at which a quorum is present or represented. The special assessment against each Assessable Lot shall be the same as the special assessment against every other Assessable Lot.

**Section 5. Commencement of Annual Assessment; Due Dates.** The annual assessments provided for herein shall commence on each Assessable Lot on the first (1st) day of the calendar month after it becomes an Assessable Lot. The amount of the annual assessment on each such Assessable Lot for the balance remaining in the first (1st) year of assessment shall be an amount which bears the same relationship to the annual assessment on such Assessable Lot provided for in Section 3 hereof as the remaining number of months in the year bears to twelve (12), and shall be due and payable on the day such Assessable Lot becomes an Assessable Lot. After the first (1st) year, the annual assessment on such Assessable Lot for such calendar year shall be due and payable on the first (1st) day of January in said year. The due dates of any special assessment under Section 4 hereof shall be fixed in the resolution of the Members of the Association authorizing or approving such assessment.

**Section 6. Duties of the Board of Directors.** The Board of Directors of the Association shall determine the amount to be levied as the annual assessment against each Assessable Lot for each calendar year, subject to the criteria and limitations set out in Section 3 hereof. The Board of Directors of the Association shall cause to be prepared a roster of the Assessable Lots showing the amount of each assessment, which roster shall be kept in the office of the Association and shall be open to any Owner. At the request of an Owner, the Association will prepare a certificate in writing signed by an officer of the Association setting forth whether or not there are any unpaid assessments against said Owner's Property. The Association may charge a reasonable fee for furnishing such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid, as to any third party who in good faith relies thereon to his or her economic detriment.

**Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest lawful rate permitted in Texas. The Association may bring an action at law against the Owner personally obligated to pay the same, or

foreclose the lien against the Lot. Interest, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the rights and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including non-judicial foreclosures pursuant to Section 51.002 of the Texas Property Code, or any amendment to or recodification thereof, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. R. Charles Stiles is hereby appointed as Trustee as to all Lots for the purpose of enforcing the liens created in favor of the Association in this Declaration by exercising the power of sale herein granted in the same manner as a Deed of Trust. The Board in its sole discretion may appoint additional or substitute trustees to exercise the same powers and duties, from time to time, by written instrument recorded in the Real Property Records of Galveston County, Texas. The liens provided for in this Article shall be in favor of the Association and shall be for the benefit of all Lot owners. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 8. Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first (1st) mortgage existing at any time upon the particular Lot involved. Mortgagees are not required to collect assessments. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

**Section 9. Exempt Property.** The assessments and liens created in this Article III shall apply only to the Assessable Lots, and the remainder of the property in the Properties shall not be subject thereto or entitled to the rights granted to Members in Article II hereof.

## ARTICLE IV

### ARCHITECTURAL CONTROL COMMITTEE

**Section 1. Tenure.** The initial Architectural Control Committee shall mean and refer to Tyler D. Todd, Myles G. Sherman, W. Michael Schaffer, all of Harris County, Texas, and their successors. The persons serving on the initial Architectural Control Committee, or their successors, shall serve until such time as all Lots subject to the jurisdiction of the Association, including all Lots on land annexed to the Properties pursuant Article IX hereof, have or have had Living Units thereon occupied as residences, at which

time the initial Architectural Control Committee shall resign and thereafter its duties shall be fulfilled and its powers exercised by an Architectural Control Committee appointed by the Board of Directors of the Association. In the event of the death or resignation of any person serving on the initial Architectural Control Committee, the remaining person(s) serving on the Committee shall designate a successor, or successors, who shall have all of the authority and power of his or their predecessor(s). A majority of the Architectural Control Committee may designate someone serving on the Committee to act for it. No person serving on the Committee shall be entitled to compensation for services performed pursuant to this Article IV. However, the Committee may employ one or more architects, engineers, attorneys, or other consultants to assist the Committee in carrying out its duties hereunder; and the Association shall pay such consultants for such services as they render to the Committee.

**Section 2. Approval of Plans.** No buildings or other improvements, including, but not limited to, swimming pools, streets, driveways, sidewalks, basketball or other sports facilities, devices of any kind, including dishes, reflectors or antennae for sending or receiving any type of electronic signal, drainage facilities, landscaping, fences, walks, fountains, statuary, outdoor lighting and signs, shall be commenced, constructed, erected, placed, or maintained on the Property, nor shall any exterior addition to or alteration therein be made, unless and until: (i) a preliminary site plan showing all existing and proposed uses and dimensions, the location of buildings, swimming pools, entries, streets, driveways, parking areas, pedestrian ways, and storage areas, and a schematic plan for the landscaping and lighting of the Property, have been submitted to and approved in writing by the Architectural Control Committee; and thereafter (ii) the final working plans and specifications for the work shown on the preliminary site plan and the schematic plan have been submitted for approval by the Architectural Control Committee as to compliance with this Declaration and as to harmony of surrounding uses, structures, walks, and topography. The final working plans and specifications shall specify, in such form as the Architectural Control Committee may reasonably require, structural, mechanical, electrical, and plumbing details and the nature, kind, shape, height, exterior color scheme, materials, and locations of the proposed improvements or alterations thereto. The Architectural Control Committee shall have the rights, free of charge, to retain one (1) copy of the final working plans and specifications. In the event the Architectural Control Committee fails to approve or disapprove the preliminary site plan and schematic plan within fifteen (15) working days after they have been submitted to it, or thereafter fails to approve or disapprove the final working plans and specifications within fifteen (15) working days after they have been submitted to it, the plan shall be deemed rejected. Without limitation of the powers herein granted, the Architectural Control Committee shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement. For purposes of this Article IV, Section 2, "schematic plan" shall mean that certain plan which has been submitted or is to be submitted by Owner to the applicable governmental authority for approval in connection with the insurance of a building permit. Where an Owner has neglected to submit preliminary and/or final working plans and specifications for approval, failure of the Architectural Control Committee to exercise the powers granted by this Article IV shall

never be deemed a waiver of the right to do so either before or after a building or other improvement on the Property, or any exterior addition to or alteration therein, has been completed.

Where not otherwise specified herein, the Architectural Control Committee also shall have the right to specify requirements for each Lot or Building Site as follows: minimum set-backs; driveway access to adjacent streets; the location, height and extent of fences, walls or other screening devices; and the orientation of structures with respect to streets, walks, and structures on adjacent Property. There shall be no chain link fencing except as may be utilized by builders with the approval of the Architectural Control Committee for temporary storage of building materials and supplies during the construction phase. No roofing materials shall be allowed other than asphalt, tile or wood shingles, all of which shall meet FHA minimum property standards. The surface materials used in the construction of driveways and front sidewalks will consist solely of concrete, unless otherwise approved by the Architectural Control Committee. The Architectural Control Committee shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction requirements or architectural design requirements or that might not be compatible, in its judgment, with the overall character and aesthetics of the Property.

**Section 3. Approved General Contractors.** No construction of a building, structure, fence, wall, or other improvement shall be commenced on the Property until the general contractor to perform such construction shall have been approved in writing by the Architectural Control Committee, which approval shall not be unreasonably withheld. In the event the Committee fails to approve or disapprove a general contractor within fifteen (15) working days after his name is submitted to it, approval will not be required, and the provisions of this Section 3 will be deemed to have been fully satisfied.

**Section 4. No Liability.** Neither Declarant, the Association, Board of Directors, nor the Architectural Control Committee or the members thereof shall be liable for damages to anyone submitting plans or specifications to them for approval, or to any Owner of Property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner agrees that he will not bring any action or suit against Declarant, the Association, Board of Directors, the Architectural Control Committee, or any of the members thereof to recover any such damage.

**Section 5. Rules and Regulations.** The Architectural Control Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions hereof.

**Section 6. Variances.** Where circumstances, such as topography, location of property lines, location of trees, or other matters require, the Architectural Control

Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of such committee pursuant to this Article IV, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property. It is further provided, however, that, so long as Declarant owns any part of the Properties, the Declarant hereby reserves the right of approval or disapproval of all variances which may affect building setback lines, Lot area and structure locations.

## ARTICLE V

### EASEMENTS

**Section 1. General.** The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer, water, electricity, gas, telephone, and cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer and/or water house connections or electricity, gas, or telephone and cable television lines or drainage facilities are installed within the Property, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, line or facilities, such Owners of Lots served, and/or their agents, shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots within the Property in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as to when the same may be necessary as set forth below.
- (b) Wherever sanitary sewer and/or water house connections or electricity, gas, telephone, cable television or telecommunication lines or drainage facilities are installed within the Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections or lines shall be entitled to the full use and enjoyment of such all portions of said connections or lines which serve his or her Lot.

**Section 2. Reservation of Easements.** Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, telecommunication, water, gas and sanitary sewer lines and drainage facilities, and other mechanical and electrical systems deemed by Declarant and/or the Association to be necessary for, or convenient to, the existence, enjoyment, maintenance, management, operation or safety of the Property, are hereby reserved by Declarant and/or the Association, together with the right to grant and transfer same.

**Section 3. Surface Area of Utility Easement.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the Subdivision Plat.

Underground electric, gas and telephone service may be available to all Lots in the Property. For so long as such underground service is maintained, the electric service to each Lot shall be uniform and exclusively of the type known as single phase, 120/240 volts, 3 wire, 60 cycle, alternating current. Easements for the underground service may be crossed by driveways, walkways, patios, brick walls and fences, provided the Declarant or a builder makes prior arrangements with the utility companies furnishing electric, gas and telephone service and provides and installs any necessary conduit of approved type and size under such driveways, walkways, patios, brick walls or fences prior to construction thereof. Such easements for the underground service shall be kept clear of all other improvements, and neither the grantor or nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants, to shrubbery, trees, flowers or other improvements (other than crossing driveways, walkways, patios, brick walls or fences, providing conduit has been installed as set forth above) of the Owner located on the land covered by said easements. In addition hereto, the utility easements shall not be used as alleyways.

**Section 4. Public Streets.** All Lots within the Property shall abut and have access to a public street. Public street rights-of-way are shown on the Subdivision Plat.

**Section 5. Emergency and Service Vehicles.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Properties, including but not limited to private streets, in the performance of their duties and further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Common Properties to render any service.

**Section 6. Universal Easement.** Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted by Declarant, over all adjoining Lots and Common Properties for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being served and shall pass with each conveyance of said Lot.

**Section 7. Public Easement.** There is hereby reserved to Declarant, its successors and assigns, an easement for public ingress and egress over any public pedestrian pathways. This easement shall not imply any right of public use of the Common Properties, or improvements thereon, owned by the Association.

**Section 8. Audio and Video.** In the event that audio and video communication services and utilities are made available to any said Lots by means of an underground coaxial cable, fibre optic cable or other communication system, the company furnishing such services and facilities shall have a two foot (2') wide easement along and centered on the underground wire or cable when and as installed by said company from the utility easement nearest to the point of connection on the permanent improvement or structure constructed, or to be constructed upon said Lot, and in a direct line from said nearest utility easement to said point of connection.

## **ARTICLE VI**

### **UTILITY BILLS, TAXES AND INSURANCE**

**Section 1. Obligation of the Owners.** Owners' utility bills, taxes and insurance shall be governed by the following:

- (a) Each Owner shall have separate electric, gas (unless a total electric dwelling) and water meters and shall directly pay the cost and expense for all electricity, gas, water, sanitary sewer service, telephone service, cable television, telecommunication, and other utilities and services used or consumed by him or her on the lot.
- (b) Each Owner shall directly render for taxation his or her own Lot and improvements thereon, and shall directly pay all taxes levied or assessed against or upon the said Lot and the improvements and property thereon.
- (c) Each Owner shall be responsible for obtaining and paying for the property insurance on the building and contents of the residence on the Lot and the additions and improvements thereto, including decorations, furnishings, and personal property therein; and also for any personal liability insurance covering the Lot, except for insurance for all Owners which may be obtained by the Association as part of the common expense in connection with the Common Property as herein provided.

**Section 2. Obligation of the Association.** The Association shall have the following responsibilities regarding utility bills, taxes and insurance:

- (a) The Association shall pay, as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Property or any part thereof.
- (b) The Association shall render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or

upon the Common Property and the improvements and the property appertaining thereto.

- (c) The Association shall have authority to obtain and continue to effect as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the Common Property and the contents thereof and the Association against the risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such limits as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Property. The Association may secure such other forms of insurance coverage as its Board of Directors may from time to time direct, including but not limited to coverage for the officers and directors of the Association.
- (d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid out of the maintenance fund as a common expense of all Owners and shall be a part of the maintenance assessment.

## ARTICLE VII

### MAINTENANCE AND REPAIRS

**Section 1. By the Owners.** It shall be the duty, responsibility and obligation of each Owner at said Owner's cost and expense to care for, maintain and repair the exterior and interior of the Owner's residence house and other improvements on the Owner's Lot and the fixtures, appliances, equipment and other appurtenances thereto and also including the private driveway, appurtenant to the Owner's house, and sidewalks and fences which are appurtenant to and situated on the Owner's Lot. The Owner shall have the duty, responsibility and obligation to permit no deterioration or waste to occur to any improvements on the Owner's Lot. The Association shall have no duty or obligation to any Owner in this regard. Provided however, the obligations of this section may be enforced as provided in Article IX, Section 12 hereof.

**Section 2. By the Association.** The Association, as a common expense of all Owners, shall perpetually care for, maintain and keep in good repair the Common Property and all parts thereof, including but not limited to, landscaped lawns, esplanades, parking areas and improvements and facilities owned by the Association, except that it shall be the obligation of each Owner, and not the obligation of the Association, to pay for the cost

of repair and maintenance of any private driveway, sidewalk, and fence or fences which are appurtenant to each Owner's residence house.

## **ARTICLE VIII**

### **RESTRICTIONS OF USE**

**Section 1.** All buildings, structures, and other improvements erected, altered, or placed in the Property shall be of new construction, and no structure of a temporary character, trailer, mobile home, tent, shack, garage, barn, or outbuilding shall be used in the Property at any time as a residence, either temporarily or permanently. Unless the Architectural Control Committee otherwise agrees in writing, the exterior finish or construction of any Living Unit shall be at least fifty percent (50%) brick, stone, or other masonry; in computing such percentage, roof areas shall be excluded, but attached garages, porches, and other structures constituting part of the Living Unit proper shall be included. No building shall be erected, altered or permitted to remain on any single Lot, other than one single-family residential dwelling, and a private garage for at least one (1) car and not more than three (3) cars. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other non-residential purposes. No garage shall be converted and/or used for residential purposes or human habitation and all garages shall be maintained in a condition suitable for parking motor vehicles.

**Section 2.** No nuisance shall ever be erected, placed, or suffered to remain upon any Lot in the Property and no Owner of or resident on any Lot in the Property shall use the same so as to endanger the health or disturb the reasonable enjoyment of any other Owner resident. The Association is hereby authorized to determine what constitutes a violation of this restriction.

**Section 3.** No sheep, goats, horses, cattle, swine, poultry, dangerous animals (the determination as to what is a dangerous animal shall be in the sole discretion of the Board of Directors of the Association), snakes or livestock of any kind shall ever be brought upon or kept in the Property except that dogs, cats or other common household pets (not to exceed a total of two (2) animals) may be kept by the Owner or tenant of any Living Unit, provided they are not kept or used for any commercial purpose.

**Section 4.** No trash, rubbish, garbage, manure, or debris of any kind shall be kept or allowed to remain on any Lot. The Owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense, and prior to such removal all such prohibited matter shall be placed in sanitary refuse containers with tight fitting lids in an area adequately screened by planting or fencing so as not to be seen from neighboring Lots. Reasonable amounts of construction materials and equipment may be stored upon a Lot for reasonable periods of time during the construction of improvements thereon.

**Section 5.** No oil or natural gas drilling, oil or natural gas development, or oil refining, quarrying, or mining operations of any kind, no oil, natural gas or water wells, tanks, tunnels, mineral excavations or shafts, and no derricks or other structures for use in boring for oil, natural gas, minerals or water shall be erected, maintained or permitted in the Property.

**Section 6.** No privy, cesspool or septic tank shall be placed or maintained in the Property.

**Section 7.** No boat, trailer, recreational vehicle, camping unit, bus, truck, or self-propelled or towable equipment or machinery of any sort shall be permitted to park on any Lot except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from other Lots, except that (i) during the construction of improvements on a Lot, necessary construction vehicles may be parked thereon for and during the time of necessity therefor, and (ii) this restriction shall not apply to automobiles and pick-up trucks in good operating repair and attractive condition, provided, however, that any such automobiles and pick-up trucks are parked on an improved driveway which has been approved by the Architectural Control Committee. No overnight parking of any kind shall be permitted on any public street abutting a Lot within the Property.

**Section 8.** No clothing or other materials shall be aired or dried in the Property except in an enclosed structure, or in an area adequately screened by planting or fencing so as not to be seen from other Lots or any street within the Property.

**Section 9.** Except in an emergency or when other unusual circumstances exist, as determined by the Board of Directors of the Association, outside construction work or noisy interior construction work shall be permitted only after 6:00 a.m. and before 9:00 p.m.

**Section 10.** Without the prior written authorization of the Architectural Control Committee, no television or radio antenna, nor any telecommunication transmitter or receiver, or flag-pole of any sort, shall be placed, allowed, or maintained outside a Living Unit or on the exterior of any building or other improvement located on a Lot.

**Section 11.** All electrical, telephone and other utility lines and facilities which (i) are located on a Lot, (ii) are not within or a part of any building, and (iii) are not owned by a governmental entity, a public utility company, or the Association, shall be installed in underground conduits or other underground facilities. Lighting fixtures may be installed above ground if approved in writing by the Architectural Control Committee.

**Section 12.** Mailboxes, house numbers and similar matter used in the Property must be harmonious with the overall character and aesthetics of the community and the decision of the Architectural Control Committee that any such matter is not harmonious shall be final.

**Section 13.** No fence, wall, tree, hedge or planting shall be maintained in the Property in such manner as to obstruct sight lines for vehicular traffic, from the standpoint of safety.

**Section 14.** No billboards or other signs may be erected in the Property without the prior written consent of the Architectural Control Committee. Such Committee shall furnish, upon request, a signage manual setting forth the limitations and guidelines for signs, which shall be reasonable in scope and restriction, and shall grant its written approval of signs which satisfy the requirements of such manual. The use of flags or banners in the promotion or sale of any Living Unit in the Property must be approved in writing by the Architectural Control Committee.

**Section 15.** The Owner of each Lot shall maintain the same, and the improvements, trees, hedges, and plantings thereon, in a neat and attractive condition. The Association shall have the right, after ten (10) calendar days' notice to the Owner of any Lot mailed or delivered to such Owner's last known home address, setting forth the action intended to be taken by the Association, provided at the end of such time such action has not already been taken by such Owner: (i) to mow the grass thereon; (ii) to remove any debris therefrom; (iii) to trim or prune any tree hedge, or planting that, in the opinion of the Association, by reason of its location or height, or the manner in which it has been permitted to grow, is detrimental to the enjoyment of adjoining property or is unattractive in appearance; (iv) to repair or paint any fence thereon that is out of repair or not in harmony, with respect to color, with fencing on adjacent property; (v) to repair or paint any Living Unit that is out of repair or not in harmony, with respect to color, with a Living Unit on adjacent property; and (vi) to do any and all things necessary or desirable in the opinion of the Association to place such Property in a neat and attractive condition consistent with the intention of this Declaration. The person who is the Owner of such Property at the time such work is performed by the Association shall be personally obligated to reimburse the Association for the cost of such work within ten (10) calendar days after it is performed by the Association, and if such amount is not paid within said period time, such Owner shall be obligated thereafter to pay interest thereon at the highest lawful rate permitted in Texas, and to pay any attorney's fees and court costs incurred by the Association in collecting said obligation, and all of the same shall be secured by a lien on such Owner's Property, as provided in Article III, subject only to liens then existing thereon.

**Section 16.** Except for the easement rights elsewhere recognized in this Declaration, each Lot shall be used only for a Living Unit and a private garage, and no Lot shall be used for business, commercial or professional purposes of any kind. With each Living Unit there shall be a functional attached or detached enclosed garage. Carports are expressly prohibited.

**Section 17.** The Owner of each Lot shall construct and maintain at his or her expense a driveway of not less than ten feet (10') in width from the Owner's garage to an abutting street, including the portion in the street easement, and the Owner shall repair at

his or her expense any damage to the street occasioned by connecting the driveway thereto.

**Section 18.** No building or Living Unit in the Property shall exceed two and one-half stories or forty-five (45) feet in height measured at the roof peak. No Living Unit of one (1) story shall contain less than 1,600 square feet of living area and no Living Unit of more than one (1) story shall contain less than 1,750 square feet of living area, unless the Architectural Control Committee agrees to the contrary in writing. All computations of living area shall be exclusive of open or screened porches, terraces, patios, driveways, or garages. Measurements shall be to the face of the outside walls of the living areas.

**Section 19.** As to each Lot in the Property the following building requirements shall apply unless the Architectural Control Committee agrees to the contrary in writing, to-wit:

- (a) No building or other structure: (i) shall be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat; (ii) shall be placed or built on any Lot nearer than twenty-five feet (25') from the front lot line; (iii) shall be placed or built on any Lot nearer than ten feet (10') from the rear lot line; (iv) shall be placed or built on any Lot nearer than five feet (5') from an interior lot line; or (v) shall encroach on any easement shown on the Subdivision Plat or created by subsequent recorded instrument.
- (b) A fence, hedge or other similar structure: (i) shall not be placed or built on any Lot nearer to the front lot line or nearer to a side street line than the building lines therefor shown on the Subdivision Plat; (ii) shall not be placed or built on any Lot nearer than twenty-five feet (25') from the front lot line; and (iii) shall be constructed and maintained on the side or rear lot line, as shown on the Subdivision Plat, as required by Section 21 below.
- (c) Before the residence constructed on the Lot is completed, the Owner shall construct and thereafter maintain in the adjacent street right(s)-of-way a concrete sidewalk four feet (4') in width parallel to the street curb and six feet (6') away from such street curb. The sidewalk shall extend along the entire common boundary between the Lot and the adjacent street right(s)-of-way. In the case of a corner Lot, the front and side sidewalks shall each extend to the street curb and meet existing requirements for barrier-free access.

**Section 20.** The Owner of each Lot, as a minimum, shall plant and maintain grass sod over his or her entire front yard, and shall plant at least two (2) trees between the Living Unit and the curb line(s) of the abutting street(s), such trees to be of a minimum three inch (3") caliber.

**Section 21.** The Owner of each Lot shall be required to completely fence in his or her back yard, and to maintain and repair such fence in accordance with the provisions of

Article VII hereof. Unless the Architectural Control Committee shall otherwise agree, all fences shall be constructed of wood, and shall not be less than six feet (6') nor more than eight feet (8') in height, except fences on the rear line of any Lot adjoining F. M. 646 (or any re-designation of said road) which fence shall be uniformly eight feet (8') in height and shall have capping at the top and rot board at the bottom, and shall present a uniform face to F. M. 646 with all posts, stringers and other structural members installed on the side away from F. M. 646. Chain link fences are expressly prohibited. If a fence is erected along the common boundary between two (2) Lots, each adjoining Owner shall be responsible for maintaining said fence, and, in the event one Owner repairs or replaces the fence, he or she shall be entitled to reimbursement for one-half (1/2) of the cost from the adjoining Owner.

**Section 22.** Notwithstanding the foregoing provisions of this Article VIII, so long as Declarant owns any party of the Property, Declarant and its permittees shall have the exclusive right to erect, place and maintain on their respective lots in the Property such facilities (including but not limited to, sales or other offices, storage areas, model units, flags and signs) as in Declarant's sole discretion may be necessary or convenient to improve and/or sell Lots in the Property.

**Section 23.** Each residence or other structure on any Lot which abuts F. M. 646 (or any re-designation of said road) shall comply with the following requirements, which constitute additional restrictions on each of the said Lots:

- (a) If the residence is one (1) story tall, it shall in no event exceed, above the grade of the Lot (i) an exterior wall height of fifteen feet (15') including the exposed slab, if any, and (ii) a roof peak height of twenty-five feet (25');
- (b) If the residence is one and one-half (1½) stories tall, it shall have a full, continuous roof on the back side of the residence facing FM 646 with no break or change in pitch from the roof peak to the eave and with no dormers or other breaks in the continuity of the roof surface, and the residence shall not exceed a height at the roof peak of thirty-two feet (32') above the grade of the Lot, including the exposed slab, if any;
- (c) If the residence is two (2) stories tall, all walls will be surfaced with masonry of size and color approved by the Architectural Control Committee, and the residence shall not exceed a height at the roof peak of thirty-two feet (32') above the grade of the Lot, including the exposed slab, if any.

**ARTICLE IX****GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association or any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Incorporation.** The terms and provisions of this Declaration shall be construed as being adopted in each and every contract, deed, or conveyance hereafter executed by Declarant or any other person conveying all or any part of the land in the Property, whether or not referred to therein, and all estates conveyed therein and warranties of title contained therein shall be subject to the terms and provisions of this Declaration.

**Section 3. Amendments.** This Declaration may be amended in whole or in part by an instrument executed by the President of the Association when approved by Members entitled to cast not less than two-thirds (2/3) of the aggregate of the votes of both Classes of Membership. Following any such amendment, every reference herein to this Declaration shall be held and construed to be a reference to this Declaration as so amended.

**Section 4. Amendments by Declarant.** The Declarant shall have and reserves the right at any time and from time to time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing duly signed, acknowledged, and filed for record for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by The Declaration, and shall not impair or attest the vested property or other rights of any Owner or his mortgagee.

**Section 5. Books and Records.** The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any member will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

**Section 6. Annexation.** Additional residential property and "Common Property" may be annexed to the Properties as follows:

- (a) **With the consent of two-thirds (2/3) of each class of members; provided, however, that upon submission to and approval by the FHA or the VA of the general plan, such additional stages of development may be annexed by the Declarant (whether or not the Declarant owns title to the land constituting the additional stages of development at the time of annexation) without such consent;**
  
- (b) **Notwithstanding anything contained in sub-section (a) above, but subject to the provisions of Article X hereof, additional land contained within that certain multi-use subdivision known as BAY COLONY and more particularly described in that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BAY COLONY, filed for record under Galveston County Clerk's File No. 8548877, may be annexed from time to time by the Declarant, its successors or assigns, without the consent of other Owners, or their mortgagees, within ten (10) years of the date of recording of this instrument;**
  
- (c) **The annexation or addition may be accomplished by the execution and filing for record by the owner of the property being added or annexed of an instrument which may be called "Supplemental Declaration" which shall at least set out and provide in substance: the name of the owner of the property being added or annexed who shall be called the "Declarant"; the perimeter description of the property being added or annexed which for descriptive purposes may be designated as the first or fourth, etc., as the case may be, section/phase of Lakes in Bay Colony, or such other designation as Declarant, in its sole judgment may choose; the description of the residential areas and of the Common Property of the property being added or annexed and the rights and easements of the Owners in and to the Common Property; that the property is being added or annexed in accordance with the provisions of this Declaration of Covenants, Conditions and Restrictions, and that the property being annexed shall be developed, held, used, sold and conveyed in accordance with and subject to the provisions of this Declaration of Covenants, Conditions and Restrictions; that all of the provisions of the Declaration of Covenants, Conditions and Restrictions shall apply to the property being added or annexed with the same force and effect as if said property were originally included therein as part of the original development; that the property being added or annexed is submitted to the jurisdiction of the Association with the same force and effect as if said property were originally included in this Declaration of Covenants, Conditions and Restrictions as part of the original development; and, such "Supplemental Declaration" may contain such other provisions which are not inconsistent with the provisions of this Declaration of Covenants, Conditions and Restrictions or the general scheme or plan of development of the Property as a residential development. Nothing in this Declaration shall be construed**

to represent or imply that Declarant, its successors or assigns, are under any obligation to add or annex additional property to this residential development.

- (d) At such time as the "Supplemental Declaration" is filed for record as hereinabove provided, the annexation shall be deemed accomplished and the annexed area shall be a part of the Properties and subject to each and all of the provisions of this Declaration of Covenants, Conditions and Restrictions and to the jurisdiction of the Association in the same manner and with the same force and effect as if such annexed property has been originally included in this Declaration of Covenants, Conditions and Restrictions as part of the initial development.
- (e) After additions or annexations are made to the development, all assessments collected by the Association from the Owners in the annexed areas shall be commingled with the assessments collected from all other Owners so that there shall be a common maintenance fund for the Properties.

**Section 7. Rights of Mortgagees, Trustees or Lienholder.** No violations of any of these restrictions, covenants or conditions, shall affect or impair the rights of any Mortgagee, Trustee or Lienholder under any mortgage or deed of trust, or rights of any assignee of any Mortgagee, Trustee or Lienholder under any such mortgage or deed of trust.

**Section 8. Right to Subdivide or Resubdivide.** Prior to the time Declarant parts with title thereto, Declarant shall have the right (but shall never be obligated) to subdivide or resubdivide into Lots, by recorded plat or in any other lawful manner, all or any part of the property in the Property; provided, during any period of time that there is an outstanding loan on a Lot in the Property guaranteed by the FHA or the VA, no such action may be taken without the consent of such guarantor(s).

**Section 9. Building Sites.** With the written approval of the Architectural Control Committee, the Owner(s) of a group of Lots, each of which is adjacent to one or more of the other lots in the group, may designate a part of a lot, or any combination of lots or portions of lots, to be a building site or building sites. The front, rear and side lines of the platted lots affected by any such action, as such lines are designated on the Subdivision Plat, shall be adjusted to conform to the front, rear and side lines of the new building sites for building and other purposes. Improvements may be constructed on any such building site in accordance with the new front, rear and side lines thereof. Each such building site, upon being designated as such by the Owner(s) thereof with the written approval of the Architectural Control Committee, shall thereafter be a Lot for all purposes of this Declaration, except that all future assessments payable by the Owner of a building site comprised of several Lots combined in accordance with this Section 9 will be based upon one assessment for each of the originally platted Lots so combined. No combination or

recombination of Lots shall reduce the total number of Assessable Lots within the Properties.

**Section 10. No Obligation as to Adjacent Property.** The Property is or may be a part of a larger tract or block of land owned by Declarant. Declarant is not obligated to commit any part of its other land to any particular use or plan. While Declarant may subdivide other portions of its property, or may subject the same to a declaration such as this Declaration, Declarant shall have no obligation to do so and if Declarant elects to do so, any subdivision plat or declaration executed by Declarant with respect to any of its other property may be the same as or similar or dissimilar to any subdivision plat covering the Property, or any part thereof, or to this Declaration.

**Section 11. Duration.** This Declaration shall remain in full force and effect for a term of thirty (30) years from the date this Declaration is recorded in the Real Property Records of Galveston County, Texas, after which time this Declaration shall be extended automatically for successive periods of ten (10) years each unless and until an instrument signed by the Members entitled to cast no less than two-thirds (2/3) of the aggregate of the votes of both Classes of Membership has been filed for record in the Real Property Records of Galveston County, Texas, agreeing to terminate this Declaration. Such an instrument so filed for record shall become effective on the date stated therein or one (1) year after it is so filed for record, whichever is the later date.

**Section 12. Enforcement.** The terms and provisions of this Declaration shall run with and bind the land in the Property, and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any Lot, and by their respective legal representatives, heirs, successors and assigns. This Declaration may be enforced in any proceeding at law or in equity against any person or entity violating or threatening to violate any term or provision hereof, to enjoin or restrain violation or to recover damages, and against the Property to enforce any lien created by this Declaration, and failure of Declarant, the Association, or any Owner to enforce any term or provision of this Declaration shall never be deemed a waiver of the right to do so thereafter.

**Section 13. Severability.** Invalidation of any term or provision of this Declaration by judgment or otherwise shall not affect any other term or provision of this Declaration, and this Declaration shall remain in full force and effect except as to any terms and provisions which are invalidated.

**Section 14. Gender and Grammar.** The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

**Section 15. Titles.** The titles of this Declaration and of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any terms or provisions contained in this Declaration.

**Section 16. Successors in Title.** The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Declarant and the Association and their respective successors and assigns.

**Section 17. Prior Restrictions.** The Properties are subject to that certain Declaration of Covenants, Conditions and Restrictions for Bay Colony filed for record under Galveston County Clerk's File No. 8548877. Said Declaration provides and adopts a uniform plan of covenants, easements, restrictions, conditions, reservations, charges and liens for the better development, improvement, sale, use and enjoyment of Bay Colony as an office, retail, commercial, church, school, medical and residential community, and the maintenance of green belt areas and landscape reserves located therein. The Declarant and the Association named in said Declaration of Covenants, Conditions and Restrictions for Bay Colony, and either of their designees, shall have the same rights of enforcement set forth in Section 12 of this Article IX, except that such rights of enforcement pertain to the collection of the maintenance assessments or enforcement of the lien securing same set forth herein.

The Properties are further subject to that certain Declaration of Covenants, Conditions and Restrictions for Bay Colony (Recreational Facilities) filed for record under Galveston County Clerk's File No. 8743590. Said Declaration provides and adopts a plan of covenants, easements, restrictions, conditions, reservations, charges and liens for the better development, improvement, sale, use and enjoyment of certain recreational facilities in Bay Colony. The Declarant and the Association named in said Declaration of Covenants, Conditions and Restrictions for Bay Colony (Recreational Facilities), and either of their designees, shall have the same rights of enforcement set forth in Section 12 of this Article IX, except that such rights of enforcement pertain to the collection of the maintenance assessments or enforcement of the lien securing same set forth herein.

## ARTICLE X

### FHA/VA APPROVAL

As long as there is Class B membership in the Association, the following actions will require the prior approval of the FHA or the VA: annexation of additional properties, a transfer of the Association's property to a successor corporation by merger, consolidation or conveyance of assets; an acquisition by the Association of additional land as a part of its Common Properties; the execution of a mortgage covering all or any part of the Common Properties; the exercise by the Declarant of the rights reserved by it in Article IX, Section 8; and/or an amendment to or cancellation of this Declaration. The provisions of

this Article X shall terminate and cease to be applicable when the Class B membership in the Association terminates.

In witness whereof, this Declaration is executed the 19 day of April, 1999.

BAY COLONY LAKES, L.P.,  
a Texas limited partnership

By: [Signature]  
Tyler D. Todd, President

The State of Texas §  
  §  
County of Harris §

This instrument was acknowledged before me on 19<sup>th</sup> April, 1999, by Tyler D. Todd, President of BAY COLONY LAKES, L.P., a Texas limited partnership, on behalf of said corporation.



[Signature]  
Notary Public in and for The State of Texas

**JOINDER OF MORTGAGEE**

The undersigned, **BANK UNITED, fsb**, being the owner and holder of an existing mortgage and liens upon and against a portion of the real property described in the foregoing **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE LAKES IN BAY COLONY, SECTION ONE** (the "Declaration"), does hereby consent to and join in the foregoing Declaration for the purpose of subordinating all of the liens held by it against the Properties unto these presents; and Randolph C. Henson, Trustee, hereby agrees that a foreclosure of any or all of said liens shall not affect the foregoing reservations, restrictions, covenants and conditions.

This consent and joinder shall not be construed or operate as a release of said mortgage or liens owned or held by the undersigned, or any part thereof, but the undersigned agrees that its said mortgage and liens shall hereafter be upon and against said real property, subject to the foregoing Declaration (except that no provision hereof shall be construed to subordinate the mortgage and liens of the undersigned to any liens reserved or referred to in the foregoing Declaration).

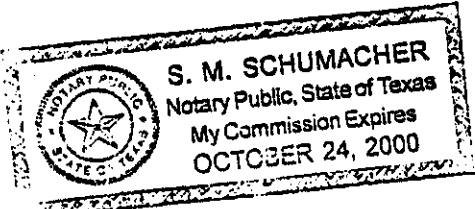
EXECUTED this 19th day of April, 1999.

**BANK UNITED, fsb**

By: [Signature]  
Name: CAROLYNN S. ALEXANDER  
Title: REGIONAL DIRECTOR

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

This instrument was acknowledged before me, on April 19th, 1999, by Carolynn S. Alexander, Regional Director of **BANK UNITED, fsb**.



[Signature]  
Notary Public in and for The State of Texas

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS OF REAL PROPERTY

[Signature]

4-22-99 12:08 PM 9919024  
STRIMLT \$63.00  
Patricia Ritchie, County Clerk  
GALVESTON COUNTY, TEXAS