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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ENCLAVE AT MESA 00005126770

STATE OF TEXAS §
COUNTY OF TRAVIS §

WHEREAS, SUTTON KNOX, LTD., a Texas Limited partnership ("Declarant"), is the owner of all lots in The Enclave at Mesa, a subdivision in Austin, Travis County, Texas, according to the map of plat of record at Book 92, Pages 173-174 of the Plat Records of Travis County, Texas (the "Subdivision"); and

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WHEREAS, all lots located in the Subdivisions (the "Property"), are intended to be developed for single family residential purposes; and

WHEREAS, Declarant desires to create upon the Property a residential community and to carry out a uniform plan for the improvement and development of the Property for the benefit of the present and future owners of the Property; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of common areas and, to that end, desires to subject the Property to the covenants, conditions and restrictions hereinafter set forth, each of which is for the benefit of the Property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create a homeowners association, to which association the powers of maintaining, administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments and charges herein created, shall be delegated and assigned;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that it is hereby declared (i) that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be deemed to have been executed, delivered and accepted subject to the following covenants, conditions and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 "Architectural Committee" shall mean the committee created pursuant to this Declaration, as provided in Article 3 below.

REAL PROPERTY RECORDS TRAVIS COUNTY, TEXAS

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1.2 "Articles" shall mean the Articles of Incorporation of the Association, which have been, or will be, filed in the office of the Secretary of State of the State of Texas, as the Articles may from time to time be amended.

1.3 "Assessment(s)" shall mean assessment(s) levied by the Association and includes both regular and special assessment(s) as provided in Article 5 below.

1.4 "Association" shall mean The Enclave at Mesa Owners Association, Inc., a Texas non-profit corporation.

1.5 "Association Property" shall mean the Common Area and Facilities and all other real or personal property, of any kind or nature, now or hereafter owned by or leased to the Association.

1.6 "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust.

1.7 "Board" shall mean the Board of Directors of the Association.

1.8 "Building" shall mean a structure, including a residence, having a roof supported by columns or walls for the shelter, support or enclosure of persons or property but shall not include eaves and steps when measuring for setbacks and other distances.

1.9 "Bylaws" shall mean the Bylaws of the Association which may be adopted by the Board, as the Bylaws may from time to time be amended.

1.10 "Common Area and Facilities" shall mean (a) all portions of the Subdivision designated as common area on the Plat, (b) any and all fencing and Landscaping placed in or about the Subdivision by Declarant for the benefit of the Association and the Owners, (c) all easements (except public utility easements), access easements, rights-of-way, median strips, sidewalks, paths, trails, detention ponds, and other areas of the Property which service the Lots or are dedicated for the benefit of the Association and/or the Owners and are not maintained and repaired by a Governmental Authority, (d) any drainage and/or filtration facilities conveyed to the Association for operation and maintenance, and (e) all improvements, equipment, and other facilities located on any of the above described properties and owned by or conveyed or assigned to the Association.

1.11 "Declarant" shall mean Sutton Knox, Ltd., a Texas limited partnership, and its duly authorized representatives and successors, or assigns as provided in Section 7.8 hereof.

1.12 "Declaration" shall mean this instrument, as this instrument may from time to time be amended or supplemented.

1.13 "Development," as used interchangeably with "Improvements" in this Agreement, shall include Buildings, roads and other structures and all appurtenances thereto of every type and kind, including but not limited to outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, playscapes, treehouses, swing sets, fences, screening walls, retaining walls, stairs, steps, porches, mailboxes, walkways, driveways, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, exterior lighting fixtures and equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, aerials, satellite dishes, wind generators, solar collectors, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television and other utilities.

"Development" or "Improvement(s)" shall also include construction, excavation, dredging, grading, filling, clearing or removing vegetation, and the deposit of refuse, waste or fill. The following activities are not "Development" or "Improvements", as such term is used in this Declaration: lawn and yard care, including mowing of tall weeds and grass; gardening; tree care and maintenance; removal of trees or other vegetation damaged by natural forces; utility, drainage and street repair; and maintenance and installation which does not require land disturbance or create additional impervious cover.

1.14 "Governmental Authority" shall mean the United States of America, the State of Texas, Travis County, Texas, the City of Austin, Texas, and any other political or governmental subdivision in which the Property is located, in whole or part, and any other political subdivision, agency or instrumentality exercising jurisdiction over the Property.

1.15 "Governmental Requirements" shall mean all laws, statutes, codes, ordinances, rules and regulations of any government authority applicable to the Property and/or the use, enjoyment, operation, maintenance or ownership of the Property.

1.16 "Improvements" shall be, and is, used interchangeably with "Development" as defined in Section 1.10 above.

1.17 "Landscaping" shall mean growing plants (including grass, vines, groundcover, trees, shrubs, flowers and bulbs) and related materials (including mulch, landscape edging and other materials used to fertilize, cultivate and sustain such growing plants), underground sprinkler irrigation systems, terraces, planters, screening walls, retaining walls, lights, wiring and lighting systems, and such other improvements for the landscaping and scenic enhancement of any Lot or the Common Area and Facilities.

1.18 "Lot" or "Lots" shall mean any lot or lots within the Property as established on the Plat.

1.19 "Manager" shall mean the person, firm or corporation, if any, employed by the Association pursuant to this Declaration and delegated the duties, powers and functions of the Association as provided in Section 4.5(c) hereof.

1.20 "Member" shall mean any person or entity who is a member of the Association.

1.21 "Mortgage" shall mean any mortgage or deed of trust covering any portion of the Property, including any Lot or Lots, voluntarily given by an Owner to secure the payment of a debt.

1.22 "Mortgagee" shall mean the holder of any Mortgage.

1.23 "Owner(s)" shall mean every person or entity, including Declarant, holding record legal title to a fee simple interest in any portion of the Property, including any Lot or Lots, but shall not include any Beneficiary whose sole interest in the Property or a portion thereof is derived from a Mortgage.

1.24 "Person" shall mean any individual, corporation, partnership, trust, estate, trustee, executor, administrator, Governmental Authority, or other entity having the legal right to hold title to real property.

1.25 "Plans and Specifications" shall mean any and all documents designed to guide or control the construction, alteration or removal of any Improvements on any Lot as

provided herein, including but not limited to those indicating location, size, shape, configuration, materials, including roofing materials, site plans, excavation plans, grading plans, foundation plans, drainage plans, landscaping plans, fencing plans, screening plans, elevation drawings, floor plans, exterior lighting plans, specifications on all building products and construction techniques, samples of exterior colors and materials, plans for utility services, and all other documentation or information relevant to such construction, alteration or removal.

1.26 "Plat" shall mean the plat of record at Book 92, Pages 173-174, of the Plat Records of Travis County, Texas, evidencing The Enclave at Mesa, a subdivision in Travis County, Texas.

1.27 "Property" shall mean and refer to all real property located in the Subdivision, according to, and as set forth on, the Plat, including, but not limited to the Lots and the Common Area and Facilities.

1.28 "Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Rules, Architectural Committee Rules and the Articles and Bylaws of the Association from time to time in effect.

1.29 "Rules" shall mean the rules and regulations adopted by the Board, as the same may be amended from time to time.

1.30 "Subdivision" shall mean The Enclave at Mesa, a subdivision in Travis County, Texas, according to the Plat.

ARTICLE 2 RESTRICTIONS

All of the Property shall be owned, encumbered, leased, used, occupied, enjoyed and conveyed subject to the terms, conditions and provisions of the following covenants, conditions and restrictions.

2.1 Antennae; Satellite Dishes. No exterior radio, television antenna or aerial or satellite dish shall be erected or maintained within the Property without the prior written approval of the Architectural Committee.

2.2 Insurance Rates. Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located thereon without the prior written approval of the Board.

2.3 Subdividing. Except as otherwise expressly provided in this Declaration, no Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Architectural Committee; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey an easement or other interest less than the whole, all without the approval of the Architectural Committee.

2.4 Signs. No signs of any character shall be allowed on any Lot except one professional sign for Lot identification purposes; provided, however, that the Declarant and any other person or entity engaged in the construction and/or sale of residences within the Subdivision shall have the right, during the period of development, construction, and sale of houses in the Subdivision, to construct and maintain such facilities as may be reasonably

necessary or convenient for such construction and sale, including, but not limited to, signs, sales offices, storage areas, and model units. Each lot may have one "for sale by owner" sign of less than four square feet in size. Notwithstanding the foregoing, the appearance and location of all signs must be acceptable to the Architectural Committee.

2.5 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and all such containers shall at all times be kept within an enclosed structure or appropriately screened from view of all adjacent property and public and private rights-of-way; provided, however, garbage containers shall be permitted to be placed outside of enclosed structures and may be removed from screened areas a maximum of three (3) times each week, for no longer than twelve (12) hours each time, for garbage collection. The Architectural Committee shall have the right to require each Owner to specify a specific location for trash service and to require each Owner to construct a permanent facility at an approved location for the placement of garbage containers for collection purposes. Such permanent structure shall be of the same design and materials as (or of design and materials complimentary to) the exterior of the appurtenant single-family residential structure.

2.6 Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any of the Property. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

2.7 Construction of Improvements. No Improvement may be constructed, removed or materially altered upon or from any of the Property without the prior written approval of the Architectural Committee. Any action, other than normal maintenance, refurbishment and repair of existing Improvements, removal and replacement of damaged materials and removal and replacement of dead or diseased Landscaping, which in any way materially alters the exterior appearance of any Improvement, including without limitation its color, or which involves the removal of any Improvement or the material alteration of the landscaping on a Lot, shall be performed only with the prior written approval of the Architectural Committee as provided in Section 3.4 hereof.

2.8 Repair of Buildings. All Improvements upon any of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

2.9 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way materially alters the exterior appearance of any Improvement, or the removal of any Improvement shall be performed only with the prior written approval of the Architectural Committee.

2.10 Roofing Materials. All roofing shall be metal, masonry or composition shingles of not less than a twenty-five year life.

2.11 Creek and Tributary Obstructions. No obstructions of any type, including, but not limited to, fences, dams, and concrete walkways, shall be placed in, on, or across the bed of any creek adjoining or running through any Lot in the Subdivision. "Creekbed" as used herein in relation to obstructions, means that portion of the creek where water would flow in times of normal rainfall.

2.12 Underground Utility Lines. No utility lines including, but not limited to, wires or other devices for the communications or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the Property unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the Architectural Committee; provided, however that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Architectural Committee. The installation method, including, but not limited to, location, type of installation equipment, trenching method and other aspects of installation, for both temporary and permanent utilities shall be subject to review and approval by the Architectural Committee.

2.13 Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and approved by the Architectural Committee.

2.14 Hazardous Activities and Materials.

(a) No activities shall be conducted on the Property and no Improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, activities that are expressly prohibited include (1) mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth, (2) the use or discharge of firecrackers or other fireworks within the Property, (3) the use or storage of liquid propane gas, gasoline, oil or any type of flammable liquids or gases in other than closed tanks with capacities of five (5) gallons or less within an enclosed structure or permanently screened from view, provided, however, only such liquids and gases as are customarily used for residential purposes shall be allowed on the Property, (4) any activities which may be offensive or hazardous by reason of odor, fumes, dust, smoke, noise, vibration or pollution, or which are hazardous by reason of excessive danger, fire or explosion, (5) hunting, trapping and the discharge of firearms, (6) open fires in other than a contained barbecue unit for cooking purposes, while attended and in use, or within a safe and well designed interior fireplace, (7) the use of bows and arrows, crossbows, slingshots, darts or other projectile devices, or (8) the discharge or leakage of any type of hazardous or toxic chemical or material, such as oil, fertilizers, pesticides or herbicides, provided, however, only such materials as are customarily used for residential purposes shall be allowed on the Property.

(b) No fertilizers, pesticides or herbicides other than those generally available for consumer use and approved for the purpose intend by a Governmental Authority, such as the Food and Drug Administration, shall be placed, used or stored on any Lot. All Owners using any such materials shall strictly comply with all instructions provided with such materials and shall take proper precautions in placing, using and storing such materials so that such materials are contained at all times and do not result in the unnecessary discharge thereof onto any Lot, any Common Area and Facilities or any property adjacent to the Subdivision and Facilities, or into any waterway, drainage easement, street or right of way within, or adjacent to, the Subdivision.

2.15 Temporary Structures. No tent, shack or other temporary building, improvement or structure shall be placed upon the Property without prior written approval of the Architectural Committee; provided, however, that temporary structures necessary for

storage of tools and equipment, restrooms and office space for architects, builders and foremen during the period of actual construction on a Lot only may be maintained with the prior approval of Declarant, such approval to include the nature, size, duration and location of such structure.

2.16 Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.17 Unightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from adjoining property or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickup, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed within the Property shall have sufficient garage space, as approved by the Architectural Committee, to house all vehicles to be kept on the Lot. Lot Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of forty-eight (48) consecutive hours, or for more than sixty (60) hours during any seventy-two (72) hours period. No automobiles or other vehicles may be parked overnight for more than two (2) consecutive nights on any roadway within the Property. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse of trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

2.18 Mobile Homes, Travel Trailers and Recreational Vehicles. Except as a temporary office for construction activities on a previously owned Lot, no mobile homes or manufactured homes shall be parked or placed on any Lot at any time, and no travel trailers, recreational vehicles or similar vehicles shall be parked on any portion of the Property for more than twelve (12) consecutive hours or parked on any portion of the Property during portions of two (2) consecutive days. No travel trailers, recreational vehicles or similar vehicles shall be stored or kept on any portion of the Property.

2.19 Fences. The construction of fences shall be restricted, and, except for wood privacy fencing not in excess of six (6) feet in height, no fence shall be constructed on the Property without the prior written consent of the Architectural Committee. The Architectural Committee may, in its discretion, prohibit the construction of any proposed fence, specify the height or location of the proposed fence, specify the materials of which any proposed fence must be constructed, or require that any proposed fence be screened by vegetation or otherwise so as not to be visible from other portions of the Property.

2.20 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept or maintained on the Property. No more than five (5) domestic pets may be kept on any Lot; provided, for purposes of this Restriction, a nursing pet and all of her unweaned offspring shall be considered one (1) pet. No domestic pet shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless

confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Property and no kennels or breeding operations shall be kept or allowed on any Lot. No domestic pet shall be allowed to run at large and all domestic pets shall be kept within enclosed areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

2.21 Lawns and Landscaping. No fence, wall, hedge, shrub, or tree planting which obstructs sight lines at elevations between three (3) and six (6) feet above the surface of any street or roadway shall be planted or permitted to remain on any corner Lot within the triangular area formed by the curblines of such intersecting streets and a line connecting such curblines at points twenty-five (25) feet from their intersection, or, in the case of a rounded corner, from the intersection of the curblines as extended. The same sight line limitations shall apply on any Lot within ten (10) feet of the intersection of a street curbline and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six (6) feet above ground level. The front yard of each Lot and the front and the side yard adjacent to the street of each corner Lot shall be fully sodded prior to the occupancy of the residence located on such Lot. No Landscaping may be planted or placed on any Lot without the prior written approval of the Architectural Committee, provided that any Landscaping approved by the Architectural Committee may be replaced as necessary with substantially similar Landscaping. All Landscaping shown on the Plans and Specifications for Improvements on any Lot shall be completed within a reasonable time after approval by the Architectural Committee. All Landscaping on any Lot shall at all times be kept in neat and well-groomed condition and appearance, with all trees, shrubs and plantings properly pruned, yards regularly mowed, edged and raked and all areas kept free of trash, debris, weeds and overgrowth. Each Owner shall keep all trees, shrubs, grass and plantings on such Owner's Lot or Lots free of disease and insects consistent with good horticultural practice. In the event any Owner fails to do so, Declarant, the Association or the Architectural Committee shall have the right at any reasonable time to enter upon any Lot to replace, maintain and cultivate shrubs, trees, grass or other plantings located thereon and to charge the cost thereof to the Owner of the Lot as a Special Assessment under Section 5.03 below. The Owner of the Lot adjoining a creekbed shall maintain the creekbed and banks free of debris and, if the Owner shall fail to do so, the Association shall have said area maintained at the expense of the Owner. "Creekbed," as used in this paragraph, shall mean that property lying between the centerline of a creek to the far line of the drainage easement, if any, on the Lot, or if no drainage easement exists, then that property lying between the center line of the creek to the top of the creekbed. Anything to the contrary contained in this paragraph notwithstanding, all creekbed maintenance performed by an Owner, or by the Association, shall be performed in accordance with all applicable regulations and the ordinances of the City of Austin.

2.22 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Property during such hours and on such days as may be prescribed by the Architectural Committee; provided, however, that the Architectural Committee may not prohibit or restrict construction activity between the hours of 8:00 a.m. and 6:00 p.m. on any day other than a Sunday or legal holiday. Specifically, no such construction activities during such hours and on such days as may be prescribed by the Architectural Committee shall be deemed to constitute a nuisance or a

violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction.

2.23 Compliance with Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both, maintainable by the Board on behalf of the Association or by an aggrieved Owner.

2.24 Liability of Owners for Damage to Common Area and Facilities. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area and Facilities without the prior written approval of the Board of Directors of the Association. Each Owner shall be liable to the Association for any and all damages to (i) the Common Area and Facilities, or (ii) to any Improvements constructed on any Lot, the maintenance of which has been assumed by the Association, which damage is caused by the neglect, misuse or negligence of such Owner or such Owner's family, or by any tenant or other occupant of such Owner's Lot, or any guest or invitee of such Owner. The full cost of all repairs of such damage shall be an Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectible in the same manner as provided in Sections 5.4 and 5.5 below, including but not limited to foreclosure of such lien.

2.25 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article II or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

2.26 Residential Use. All Lots shall be improved and used solely for single family residential use and accessory uses, including, without limitation, a garage, fencing and such other Improvements as are necessary or customarily incident to residential use, or for greenbelt, open space or other use approved by Declarant. No business or commercial activity to which the general public is invited shall be conducted within the Subdivision. No Improvement constructed on a Lot may be used as an apartment house, flat, lodging house or hotel, but such Improvements may be leased for single family residential purposes for a minimum term of thirty (30) days within each six month period.

2.27 Building Height. No Improvement shall exceed two (2) stories in height and no Improvement greater than thirty-two (32) feet in height may be constructed on any Lot without the prior written approval of the Architectural Committee. For purposes of this paragraph, height shall be measured from the poured foundation at its lowest point on the Lot to the ridge line of the roof of the proposed Improvement.

2.29 Dwelling Size. Unless such requirement is expressly waived in writing by the Architectural Committee, any single family dwelling constructed on a Lot must have a floor area of not less than 3000 square feet, exclusive of open and closed porches, terraces, patios, balconies, driveways, and garages. This requirement can be waived by the Architectural Committee at its discretion to a minimum of 2500 square feet.

2.30 Building Materials. All building materials shall be approved by the Architectural Committee, and only new building materials (except for used brick) shall be used in constructing any Improvements. Exposed metal roof decks which reflect light in a glaring manner such as galvanized steel sheets are specifically prohibited. Other roofing materials may be used with the prior written consent of the Architectural Committee, which may specify a minimum quality or grade of materials. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project, or shall be of a color approved by the Architectural Committee. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including without limitation the exterior surfaces of any Improvements. All usage of solar equipment must be approved in writing by the Architectural Committee. The exposed surface of the exterior walls of all single-family dwellings (exclusive of roofs, eaves, soffits, windows, gables, and trim work) shall be constructed of 75% masonry, stone or other materials specifically approved in writing by the Architectural Committee. In computing these percentages (1) all gables shall be excluded from the total area of exterior walls; (2) all windows and door openings shall be excluded from the total area of the exterior walls; and (3) stone and masonry used on fireplaces, chimneys and walls of an attached garage may be included in the computation as stone or masonry used.

2.31 Construction in Place. All dwellings constructed on the Property shall be built in place on the Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

2.32 Setback Requirements. No building shall be located or erected nearer to any Lot line bordering a street right of way than is indicated by the building line shown on the Plat of the Subdivision in which the Lot is located. No building shall (i) be located or erected nearer than 5 feet from any interior side Lot line, (ii) be located or erected nearer than 15 feet from any rear Lot line, or (iii) be located within an easement (whether shown on the Plat or otherwise of record). For purposes of these covenants, eaves, steps and open porches shall not be considered as part of the building; provided, however, that this shall not be construed to allow any such structure to encroach upon another Lot.

2.33 Rentals. Nothing in this Declaration shall prevent the rental of any Lot and the Improvements thereon by the Owner thereof for residential purposes.

2.34 Unfinished Structures. No house or other structure shall remain unfinished for more than one (1) year after construction of the subject home or structure has been commenced. Construction of a single family residence on a Lot shall begin no later than three (3) years after ownership of the Subject Lot has been legally conveyed by Declarant.

2.35 Identification of Lots. The house number for each single family residence shall be located on the home.

2.36 Fuel Tanks. No butane or fuel tank (other than small tank used for outdoor cooking) or other structure or facility for the storage of combustible fuels shall be placed or maintained on any Lot unless expressly authorized in writing by the Committee.

2.37 Prohibited Activities. No business, professional, commercial, or trade venture or activity shall be conducted on any of the Lots; provided, however, that model homes and/or sales office may be constructed and maintained by the Declarant, its successors and assigns, in connection with the development of and the construction and

sale of houses and Lots in the Subdivision. Subject to the prior written consent of the Committee, which consent is and shall be expressly required, home offices to which the general public is invited, incidental to an owner's business, may be maintained within such owner's residence, so long as activities conducted in connection with such home offices do not become an annoyance or nuisance to the neighborhood, in the sole and absolute discretion of the committee.

2.38 Garages and Driveways. All garages shall comply with all other restrictions, covenants, conditions and limitations on usage herein provided for other Improvements in the Subdivision. All garages shall be suitable for not less than two automobiles. All garages shall consist of enclosed structures and no carports shall be permitted on any Lot. Driveways on corner Lots facing both a cul-de-sac and a main thoroughfare shall be located on the cul-de-sac; provided, however, that the Committee shall have the authority to approve circular drives on any Lot. All driveways shall be constructed of asphalt or concrete and be of a minimum width of ten (10) feet, twelve (12) feet at the curb, per city requirements.

2.39 Window Materials. All windows on all Improvements in the subdivision shall utilize only clear or lightly tinted, nonreflective glass.

ARTICLE 3 ARCHITECTURAL COMMITTEE

3.1 Membership and Duties of Architectural Committee.

(a) The Architectural Committee shall consist of not less than one (1) and not more than three (3) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as Declarant, its successors or assigns deems appropriate. The initial voting members of the Architectural Committee shall be Sylvia Spertus, H. M. Pike, Jr., and Stephen S. Baumgardner.

(b) The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it may require relating to the question of whether any proposed Improvement would unreasonably obstruct the view from other portions of the Property. The Architectural Committee shall have the authority to disapprove any proposed Improvement based upon the restrictions set forth herein and the decision of the Architectural Committee shall be final and binding so long as it is made in good faith. The Architectural Committee may hire consultants, including engineers and architects, to assist it in its duties hereunder. The Architectural Committee, and its agents and employees, shall not be responsible for inspecting any proposed Improvement, nor shall its approval of any Plans or Specifications be deemed approval of any Improvement as to structural safety, engineering soundness or conformance with any building or other codes, regardless of the hiring by the Architectural Committee of any consultants to assist it in its duties hereunder.

(c) Items presented to the Architectural Committee shall be decided by majority vote of the Voting Members. The Architectural Control Committee's approval shall not be unreasonably withheld or delayed. If the Committee fails to respond in writing to a request for approval specifying its objections within ten (10) business days, such approval shall be deemed to have been given.

(d) The Voting Members may from time to time designate Advisory Members.

3.2 Term. Each Voting Member of the Architectural Committee shall hold office until such time as he has resigned or has been removed and his successor has been appointed.

3.3 Declarant's Rights of Appointment. Declarant, its successors and assigns, shall have the right to appoint and remove all initial members of the Architectural Committee. Declarant may delegate this right to the Board by written instrument, and such right shall be deemed delegated to the Board effective upon any termination of Declarant's privileges, exemptions, rights and duties hereunder as provided in Sections 7.8(b) or 7.8(c) below. Thereafter, the Board shall have the right to appoint and remove all members of the Architectural Committee.

3.4 Review of Construction, Alteration or Removal of Developments.

(a) Whenever in this Declaration the approval of the Architectural Committee is required, the Architectural Committee shall have the right to consider all of the Plans and Specifications for the Improvement or proposal in question and all other facts, materials, construction samples, reports and other information which it considers, in its sole discretion, to be relevant. As provided in Section 2.22 above, prior to commencement of any construction, removal or material alteration of any Improvement or landscaping on any Lot, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and such construction, alteration or removal may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. All such construction, alteration or removal shall conform to the approved Plans and Specifications.

(b) An Owner, other than Declarant, proposing to construct, remove or materially alter an Improvement or the landscaping on any Lot shall submit an application to the Architectural Committee together with three (3) sets of the Plans and Specifications for such construction, removal or alteration, and the application fee described hereinbelow. Within thirty (30) days after receipt by the Architectural Committee of such Plans and Specifications, it shall act on the Plans and Specifications as follows:

(i) The Architectural Committee may request in writing that the Owner submit to it such additional materials, construction samples, reports and information that the Architectural Committee considers relevant in reviewing the Plans and Specifications for compliance with this Declaration and the Development Agreement. Until receipt by the Architectural Committee of all information requested by it, it may postpone review of such Plans and Specifications. Upon receipt of all such information requested by it, the Architectural Committee shall act upon such Plans and Specifications within thirty (30) days.

(ii) If the Architectural Committee approves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Approved" with the date thereof, and retain one set for its records and return two sets to the Owner. The Owner must commence construction of the Development or activity shown in approved Plans and Specifications within ninety (90) days of the Architectural Committee's approval thereof or such approval shall lapse. Upon written request of an Owner, the Architectural Committee shall grant up to two (2) thirty (30) day extensions of such approval.

(iii) If the Architectural Committee disapproves such Plans and Specifications, it shall mark all sets of the Plans and Specifications "Disapproved" with the date thereof, and retain one set for its records and return two sets to the Owner, with a written statement of all of the items that were found not to comply with this Declaration and/or the Development Agreement. Thereafter, the Owner shall submit to the Architectural Committee three (3) revised sets of Plans and Specifications, with notations thereon sufficient to identify the revised portions, and the Architectural Committee shall act on such revised Plans and Specifications within thirty (30) days after receipt by it of such revised Plans and Specifications and all information requested by it as provided herein with respect to initial Plans and Specifications.

(iv) If the Architectural Committee fails to act on any Plans and Specifications submitted to it within thirty (30) days after receipt by the Architectural Committee of all information requested by it in connection with such Plans and Specifications, approval of the matters submitted to it shall be presumed.

(c) The Board shall establish and may thereafter amend from time to time an application fee that shall be paid in cash by each Owner at the time of submittal of any application and Plans and Specifications to the Architectural Committee. Such fee may be in different amounts based upon the activity proposed in such application. Such fee shall not exceed the reasonable costs and expenses of the Board and the Architectural Committee for the processing and review of Plans and Specifications and the reasonable costs and expenses of any consultants hired by the Architectural Committee as provided herein.

3.5 Actions of the Architectural Committee. The Architectural Committee may, by resolution unanimously adopted in writing by the Voting Members, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on its behalf. In the absence of such designation, the vote of a majority of all of the Voting Members of the Architectural Committee taken at a meeting shall constitute an act of the Architectural Committee. In the event that the Voting Members of the Architectural Committee cannot agree by majority vote on any matter submitted to them, the matter may be raised at any meeting of the Board and decided by a majority of the Board members present, provided that a quorum is present.

3.6 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with the provisions of this Declaration, as it may deem necessary or proper for the performance of its duties, including, but not limited to, a building code, a housing code, a fire code, a landscaping code, and other similar codes as may be deemed necessary and desirable. Any and all rules adopted by the Architectural Committee may be amended, repealed or otherwise modified at any time and from time to time by the Architectural Committee.

3.7 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatsoever, subsequently or additionally submitted for approval or consent by the same or a different Owner.

3.8 Waiver. The Architectural Committee may grant such waivers of any of the restrictions contained in Article 2 of this Declaration as it considers appropriate based upon the quality and design of a proposed Improvement; provided, however, it shall not grant a waiver of the restrictions contained in Article 2 of this Declaration unless the specific

Section states that the Architectural Committee may modify the specific restrictions or otherwise consent to a non-conforming Improvement.

3.9 Nonconforming or Unapproved Developments. The Architectural Committee, at its option, may inspect all work in progress to ensure compliance with approved Plans and Specifications. The Architectural Committee may, with the prior approval of the Board, require any Owner to restore such Owner's Lot to the condition existing prior to construction, alteration or removal of any Improvement or landscaping thereon, including without limitation the demolition and removal of any unapproved or nonconforming Improvement or landscaping, if such Improvement or landscaping was constructed or altered in violation of this Article 3. In addition, the Architectural Committee may, with the prior approval of the Board, but has no obligation to, cause such restoration, demolition and removal of any such Improvement or landscaping, and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such unapproved or nonconforming Improvement or landscaping was constructed or altered.

3.10 Nonliability of Architectural Committee and Board Members. Notwithstanding anything to the contrary in this Declaration, neither the Architectural Committee nor the members thereof, nor the Board nor the members thereof, nor such entities' and persons' respective agents, employees, heirs, successors, legal representatives and assigns, shall be liable to any Owner or any other third party due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from any Lot or Lots.

3.11 Nondiscrimination. In performing, observing and carrying out its duties, obligations, rights, powers and privileges under this declaration, the Architectural Committee shall (a) act in a nondiscriminatory manner as to each Owner, (b) shall apply the provisions of this Declaration and any of the rules adopted by the Architectural Committee in a uniform and consistent basis to all owners, Lots and Improvements, and (c) shall not act in a manner which is unreasonable or arbitrary.

3.12 Address. Plans and Specifications shall be submitted to the Architectural Committee in care of the Board at the current address of the Board, or such other address as may be designated from time to time in writing by the Architectural Committee.

**ARTICLE 4
THE ENCLAVE AT MESA
OWNERS ASSOCIATION**

4.1 Organization. The Association is a non-profit corporation created by Declarant for its purposes, and charged with the duties and vested with the powers, prescribed by law and set forth in its Articles and Bylaws or in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or the Development Agreement.

4.2 Membership. Any person or entity upon becoming an Owner shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

4.3 Voting Rights. The right to cast votes, and the number of votes which may be cast, for election of Members to the Board of the Association and on all other matters to be voted on by the Members shall be calculated as follows:

(a) The Owner (excluding Declarant) of each Lot shall have one (1) vote for each Lot so owned. If there is more than one Owner of a Lot, all such Owners shall be Members, and the vote for such Lot may be exercised as the Owners thereof mutually agree; provided, however, in no event shall more than one vote per Lot be cast.

(b) Declarant shall have five (5) votes for each Lot owned by Declarant.

4.4 Duties of the Association. Subject to and in accordance with this Declaration, the Association, acting through the Board, shall have and perform each of the following duties:

(a) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by, licensed to or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(b) To obtain and maintain in effect policies of insurance, including errors and omissions policies of insurance, which, in the Board's judgment, are reasonably necessary or appropriate to carry out the Association's functions.

(c) To maintain the Landscaping and Improvements in the medians located in certain of the public rights-of-way in the Subdivision as shown on the Plat and to maintain all signs identifying the Subdivision.

(d) To make, establish and promulgate, and in its discretion to amend or repeal and re-enact, such Association Bylaws, not in conflict with this Declaration, as it deems proper covering any and all aspects of its functions.

(e) To keep books and records of the Association's affairs.

(f) To carry out and enforce all duties of the Association set forth in this Declaration.

(g) To landscape, maintain and repair, as the case may be, any Common Area and Facilities which are not required to be maintained and repaired by the Plat by any Owners or other Persons, as well as all streets and roadways within the Property which have been completed but not accepted by the appropriate governmental entity for maintenance.

(h) To maintain all streets and roadways, including median strips, within the Property which have been completed, but not accepted by, the appropriate Governmental Authority. In addition, the Association shall be authorized to landscape, maintain and repair easements, access easements, rights-of-way, sidewalks, paths, trails, detention ponds and other areas of the Property, as appropriate.

(i) To pay for electrical service and all other costs and expenses necessary to operate and maintain the street lights within the Property, until such time and such obligation is assumed by the appropriate Governmental Authority.

(j) To accept, own, operate and maintain all Common Area Facilities which are not required by the Plat to be maintained and repaired by any Owners or other Persons and to accept, own, operate and maintain all other property, real and personal,

conveyed or leased to the Association by Declarant and to maintain in good repair and condition all lands, improvements and other Association property owned by and leased to the Association.

4.5 Powers and Authority of the Association. Subject to such limitations and restrictions as are set forth in this Declaration, the Association shall have the powers of a Texas non-profit corporation, including, but not limited to, all powers provided under the provisions of the Texas Non-Profit Corporation Act, as amended from time to time, or any successor act or statute. It shall further have the power to do and perform any and all of the Association's duties set forth in Section 4.4 above and any and all acts which may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Association and the Board acting on behalf of the Association, shall have the power and authority at all times as follows:

- (a) To levy Assessments as provided in Article 5 below.
- (b) To enter upon any Lot at any time in an emergency, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner, for the purpose of enforcing this Declaration or for the purpose of maintaining or repairing any area, improvement or other facility to conform to this Declaration, and the expense incurred by the Association in connection with the entry upon any Lot and the maintenance and repair work conducted thereon shall be a personal obligation of the Owner of the Lot entered upon, shall be secured immediately by a lien upon the Lot entered upon and the Improvements thereon, and shall be enforced in the same manner and to the same extent as provided in Article 5 hereof for regular and special Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of this Declaration. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce this Declaration.
- (c) To retain and pay for the services of a Manager to manage and operate the Association, to the extent deemed advisable by the Board. To the extent permitted by law, the Association and the Board may delegate any duties, powers and functions to the Manager. The Members hereby release the Association and the members of the Board from liability for any omission or improper exercise by the Manager of any such duty, power or function so delegated.
- (d) To retain and pay for legal and accounting services necessary or proper in the operation of the Association.
- (e) To obtain and pay for any other property and services, and to pay any other taxes or assessments which the Association or the Board is required to secure or to pay for pursuant to applicable law or the terms of this Declaration.
- (f) To enter into contracts with Declarant and with other persons on such terms and provisions as the Board shall determine, and to acquire and own, and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.
- (g) To establish and thereafter adjust from time to time as the Board may determine, in its sole discretion, an application fee to be paid in cash by each Owner at the

time of submittal of any application to the Architectural Committee as provided in Section 3.4(c).

(h) To grant and convey to any person or entity the real property and/or other interest therein, including fee title, leasehold estates, easements, rights-of-way, or mortgages out of, in, on, over, or under any Association property for the purpose of constructing, erecting, operating or maintaining the following: (i) parks, parkways or other recreational facilities or structures; (ii) roads, streets, walks, driveways, trails and paths; (iii) lines, cables, wires, conduits, pipelines or other vices for utility purposes; (iv) sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or (v) any similar public, quasi-public or private improvements or facilities.

(i) To pay for water, sewer, garbage removal, landscaping, gardening and all other utilities, services and maintenance for the property of the Association.

(j) To maintain and repair easements, roads, roadways, rights-of-way, parks, parkways, median strips, sidewalks, paths, trails, ponds and other areas of the Property, as appropriate.

(k) To own and operate any and all types of facilities for both active and passive recreation.

(l) To construct new improvements or additions to Association properties, subject to the approval of the Architectural Committee as in this Declaration required.

(m) To acquire and own and to dispose of all manner of real and personal property, whether by grant, lease, gift or otherwise.

4.6 Power to Indemnify and to Purchase Indemnity Insurance. The Association, acting through the Board, shall indemnify and may reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person who is or was a director or officer of the Association against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person to the maximum extent permitted by Article 1396 § 2.22A of the Texas Non-Profit Corporation Act, as such Act may from time to time be amended (without regard, however, to Section Q of such Article with respect to officers of the Association who are not directors of the Association). Further, the Association, acting through the Board, may indemnify and/or reimburse and/or advance expenses and/or purchase and maintain insurance, including errors and omission policies of insurance, or any other arrangement on behalf of any person, other than any person who is a director of the Association, who is or was an officer, employee or agent of the Association or a member of the Architectural Committee, or is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trustee, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in such a capacity or arising out of his status as such a person, to such extent (or, in the case of officers of the Association, to such further extent), consistent with applicable law, as the Board may from time to time determine. The provisions of this Section 4.6 shall not be deemed exclusive of any other rights to which any such person may be entitled under any Bylaw, agreement, insurance policy, vote of Members or otherwise. All costs and expenses of the insurance and other arrangements described herein shall be covered by Assessments.

**ARTICLE 5
ASSESSMENTS**

5.1 Assessments.

(a) The Association may from time to time levy Assessments against each Lot, whether or not such Lot is improved. The amount of Assessments shall be equal and uniform among all Lots and shall be levied against all Lots owned by Declarant in the same amount as against Lots owned by other Owners.

(b) Where an Owner's obligation to pay Assessments first arises after the commencement of the year or other period for which an Assessment was levied, such Assessment shall be in a prorated amount proportionate to the fraction of the year or other period remaining after said date.

(c) Each purchaser of any Lot, by acceptance of a deed therefor, shall be deemed to covenant to pay to the Association each Assessment levied hereunder against such Lot, whether or not such covenant shall be expressed in any such deed or other conveyance. Each unpaid Assessment together with interest thereon and costs and expenses of collection thereof, including without limitation reasonable attorneys' fees, as hereinafter provided, shall be the personal obligation and debt of the Owner of the Lot against which the Assessment was levied.

(d) The obligation to pay Assessments levied by the Association hereunder is part of the purchase price of each Lot when sold to an Owner. An express vendor's lien is hereby retained to secure the payment of each and every Assessment levied hereunder, and each such vendor's lien is hereby transferred and assigned to the Association, each such vendor's lien to be superior and paramount to any homestead or other exemption provided by law. The Association may enforce the payment of Assessments in accordance with the provisions of this Article 5.

(e) The Assessments shall be used exclusively for the purpose of promoting the comfort, health, safety and welfare of the Owners, the maintenance and improvement of the Lots, for exercising, enforcing and realizing upon the rights, remedies and powers of the Association and the Board, as provided in this Declaration, and for carrying out the purposes, powers, and duties of the Association and the Board as stated herein or as otherwise provided in the Articles of the Association.

5.2 Regular Annual Assessments. Prior to the beginning of each fiscal year for the Association, the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under this Declaration, including a reasonable provision for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Regular Assessments sufficient to pay such estimated net expenses for such fiscal year shall then be levied by the Association as herein provided, and the amount of such regular Assessments as determined by the Board shall be final and binding so long as such determination is made in good faith. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year for the Association for which such Assessments are payable, or during such fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

5.3 Special Assessments. In addition to the regular Assessments provided for above, the Association may levy special Assessments whenever in the Board's sole opinion

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such special Assessments are necessary to enable the Board to carry out the functions of the Association under this Declaration. The amount of any special Assessments shall be determined by the Board in its sole discretion and shall be due and payable in any manner as the Board may designate.

5.4 Owner's Personal Obligation for Payment of Assessments. Each regular and special Assessment provided for herein shall be the personal and individual debt of the Owner of the Lot against which such Assessment was levied. No Owner may exempt himself from personal liability for such Assessments. In the event of default in the payment of any Assessment, the Owner of the Lot against which such Assessment was levied shall be obligated to pay interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of fifteen percent (15%) per annum) together with all costs and expenses of collection, including without limitation reasonable attorneys' fees.

5.5 Assessment Lien and Foreclosure.

(a) The payment of each unpaid Assessment levied hereunder together with interest thereon as provided in Section 5.4 hereof and the costs and expenses of collection, including reasonable attorneys' fees, as herein provided, is secured by a continuing lien and charge on the Lot against which such Assessment was levied. Such lien for payment of Assessments shall bind such Lot in the hands of the Owner, and such Owner's heirs, devisees, personal representatives, successors or assigns, and shall be superior to all other liens and charges against such Lot, except only for tax liens, and all sums unpaid on any first lien Mortgage securing sums borrowed for the purchase or Development of such Lot, provided such Mortgage was recorded in the Real Property Records of Travis County, Texas, before such Assessment was due. The Association shall have the power, in the Board's sole and absolute discretion, to subordinate the aforesaid lien for payment of Assessments to any other lien. Any such subordination shall be signed by an officer of the Association and recorded in the Real Property Records of Travis County, Texas. Upon the written request of any Beneficiary holding a lien on any Lot that is superior to the lien for payment of Assessments as provided herein, the Association shall report to said Beneficiary the amount of any Assessments levied against such Lot remaining unpaid for a period of more than thirty (30) days after the same are due.

(b) To evidence the aforesaid lien for payment of Assessments, the Association may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, a description of the Lot encumbered by the lien and the name of the Owner of such Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Real Property Records of Travis County, Texas. The aforesaid lien for payment of Assessments shall attach with the priority set forth above from the date the payment of such Assessments becomes due. The Association may enforce such lien by the foreclosure sale of the defaulting Owner's Lot in like manner as a foreclosure of a mortgage or contractual lien on real property as provided in Section 51.002 of the Texas Property Code, as the same may be amended or modified, or the Association may institute suit against the Owner personally obligated to pay the Assessment for monetary damages and/or for the judicial foreclosure of the aforesaid lien. The Owner of the effected Lot shall be required to pay all costs and expenses, including without limitation reasonable attorneys' fees, incurred by the Association in connection with any foreclosure proceeding, whether judicial or non-judicial, and in connection with any collection proceeding. The Association shall have the power to bid on any Lot at any foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

(c) The liens for payment of Assessments provided for herein shall not be affected or extinguished by the sale or transfer of any Lot, whether by judicial or non-judicial foreclosure sale or otherwise; provided, however, that in the event of foreclosure of any first lien Mortgage superior to the lien for the delinquent Assessment, the lien for the delinquent Assessment will be extinguished, and the delinquent Assessment shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the first lien Mortgage. The extinguishing of any lien for payment of Assessments as herein provided will not relieve any Owner from the obligation to pay Assessments subsequently becoming due and payable.

ARTICLE 6 COMMON AREAS AND EASEMENTS

6.1 Common Areas.

(a) All Common Area and Facilities which are not required by the Plat to be maintained by any Owners or other Persons shall be maintained by the Association.

(b) If all or any part of the Common Area and Facilities is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The expense of participation in such proceedings by the Association shall be a common expense to be paid out of Assessments. The Association is specifically authorized to obtain and to pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association, in its discretion, deems necessary or advisable to aid it in any matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association. The Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to contest or defend any such proceedings, to make any settlement with respect thereto or to convey such property to the condemning authority in lieu of condemnation.

6.2 Reserved Easements. All dedications, limitations, restrictions and reservations shown on the Plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights made by Declarant prior to the Property becoming subject to this Declaration, are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in and additions to the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time during the thirty-six (36) months period provided in Section 7.8(c) below in which Declarant's privileges, exemptions, rights and duties are operative or in effect, rights-of-way and easements for public utility purposes (including, without limitation, gas, water, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any rear or side Lot line, which said easement shall have a maximum width of 7.5 feet on each side of such Lot line.

6.3 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, gas, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service

to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

6.4 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the Architectural Committee thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement, except as may be approved in writing by the Architectural Committee.

6.5 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

ARTICLE 7 MISCELLANEOUS

7.1 Powers of Declarant. Notwithstanding anything in this Declaration to the contrary, so long as Declarant owns any Lot, each Owner, by acceptance of record title conveying a Lot to such Owner, does hereby irrevocably constitute and appoint Sutton Knox, Ltd., its true and lawful attorney-in-fact and agent to execute, acknowledge, verify, swear to, deliver, record and file in that Owner's name, place and stead all instruments, documents and certificates which may from time to time be required in order to affect any amendment, vacating, replatting or other modification of the Plat so long as the boundaries and contours of such Owner's Lot are not in any way changed, altered or modified. In furtherance of this appointment, each Owner agrees to join in the execution, upon request of Declarant, of any instrument required to acknowledge such authorization and/or affect any such amendment, vacating, replatting or other modification of the Plat.

7.2 Term. This Declaration, including all of the covenants, conditions and restrictions hereof, shall continue in force and effect until January 1, 2025, unless amended as herein provided. After January 1, 2025, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless extinguished by a written instrument executed by Owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast pursuant to Section 4.3 of this Declaration. Nothing contained herein shall affect in any way the term of the Development Agreement.

7.3 Amendment.

(a) This Declaration may be amended by Declarant so long as Declarant owns one (1) or more of the Lots. No amendment by Declarant shall be effective until

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there has been recorded in the Real Property Records of Travis County, Texas, an instrument executed and acknowledged by Declarant and setting forth the amendment.

(b) In addition to the methods described in Section 7.3, this Declaration may be amended by the recording in the Real Property Records of Travis County, Texas, of an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by a majority of the votes entitled to cast a vote of the Members pursuant to Section 4.3 of this Declaration.

7.4 No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and by acquiring the Lot agrees to hold Declarant harmless therefrom.

7.5 Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address given by such person to the Association for the purposes of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

7.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the improvement and operation of the Subdivision and of promoting and effectuating the fundamental concepts of the Subdivision set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.7 Exemption of Declarant: Utility Easements. Declarant reserves the right to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained in and on any areas owned by Declarant sewer and other pipelines, conduits, wires and any Development relating to a public utility function, subject to Section 2.16 of this Declaration, with the right of access to the same at any time for the purposes of repair and maintenance.

7.8 Assignment by Declarant: Termination of Declarant's Privileges Exemptions, Rights and Duties.

(a) Notwithstanding anything in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity, including the Board, and may permit the participation, in whole or in part, by any other person or entity, including the Board, in any of its privileges, exemptions, rights and duties hereunder. Such assignment shall be evidenced by a written instrument, executed by Declarant and the assignee, recorded in the Real Property Records of Travis County, Texas.

(b) Notwithstanding anything in this Declaration to the contrary, and subject to the earlier assignment in whole by Declarant of all of its privileges, exemptions, rights and duties hereunder as provided hereinabove, at such time as Declarant sells, transfers or conveys the last Lot owned by it in the Subdivision, all privileges, exemptions, rights and duties of Declarant hereunder shall terminate effective the date of such sale, transfer or conveyance. No instrument or document shall be required in order to evidence such termination; provided, however, Declarant may, at Declarant's option, execute and record in the Real Property Records of Travis County, Texas, a written notice of termination. Effective with such termination, all privileges, exemptions, rights and duties of Declarant not previously assigned by Declarant as provided in Section 7.8(a) above shall be held and performed by the Board.

(c) Declarant's privileges, exemptions, rights and duties shall terminate thirty-six (36) months following the recording of this Declaration in the Real Property Records of Travis County, Texas.

7.9 Enforcement and Nonwaiver.

(a) Except as otherwise provided herein, any Owner at his own expense, Declarant or the Board shall have the right to enforce the provisions of this Declaration. Such right of enforcement shall include both damages for, and injunctive relief against, the breach or threatened breach of any such provision.

(b) Every act or omission whereby any provision of this Declaration is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined by any Owner (at his own expense), Declarant or the Board.

(c) Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any portion of the Property is hereby declared to be a violation of this Declaration.

(d) The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

(e) The Association shall have the right, when appropriate in its judgment, to claim and impose a lien upon any Lot or Development constructed thereon in order to enforce any right under, or effect compliance with, this Declaration.

7.10 Construction.

(a) The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.

(b) Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(c) All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

15th IN WITNESS WHEREOF, Declarant has executed this Declaration as of this the day of April, 1994.

SUTTON KNOX, LTD., a Texas limited partnership

By: SUTCO, INC., a Texas corporation, its Managing General Partner

By: [Signature]

Printed Name: H. M. PERE, JR.

Title: PRESIDENT

ACKNOWLEDGMENT

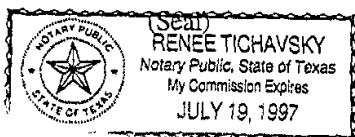
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 15th day of April, 1994, by H. M. Pike, Jr., President of Sutco, Inc., a Texas corporation, the Managing General Partner of Sutton Knox Ltd., a Texas limited partnership, on behalf of said corporation and said limited partnership.

[Signature]
Notary Public Signature

Printed Name: Renee Tichavsky

My Commission Expires: JULY 19, 1997



RECORDED

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

15134 22

FILED

APR 15 12 51 PM '94

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Return:

Hughes & Luce, LLP
111 Congress Ste 900
Austin Tx 78701

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on
the date and at the time stamped hereon by me; and
was duly RECORDED in the Volume and Page of the
named RECORDS of Travis County, Texas, on

APR 15 1994



Dana Debeauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

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