

06-09766

MASTER  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MESA OAKS  
IN THE CITY OF SCHERTZ  
GUADALUPE COUNTY, TEXAS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MESA OAKS

STATE OF TEXAS §
COUNTY OF GUADALUPE § KNOW ALL PERSONS BY THESE PRESENT THAT:

WHEREAS, Burkett Live Oak, Ltd. ("Burkett") is the current owner of all of the real property in Mesa Oaks, a subdivision located in and approved by the City of Schertz, Guadalupe County, Texas, in accordance with the Master Plan attached hereto as Exhibit A and further described by metes and bounds as set forth in Exhibit B attached thereto, both of which exhibits are incorporated herein by reference;

WHEREAS, Burkett is hereinafter sometimes referred to herein as the "Declarant"; and

WHEREAS, for the purpose of promoting the development of the Subdivision in a first-class manner, Declarant desires to place certain restrictions on the land comprising the Subdivision as more fully set forth herein.

NOW, THEREFORE, for and in consideration of promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares as follows:

ARTICLE I
DEFINITIONS

The following words and phrases when used in this Declaration (unless the context shall otherwise prohibit) shall have the following meanings;

(a) Additional Property - shall mean and refer to property that is added to the Subdivision pursuant to Section 2.4 of this Declaration or any Amended or Supplemental Declaration.

(b) Approved Materials - as defined in Section 5 of Supplemental Declaration hereof.

(c) Association - the homeowners' association (if any) established in connection with the Subdivision in the manner set forth in Section 2.3 hereof, which homeowners' association (if formed) shall be a Texas non-profit corporation. The provisions of this Declaration concerning the Association shall become effective upon formation of the Association (if formed) and shall continue to be effective during the period of time that the Association is in existence pursuant to this Declaration.

(d) Board - the board of directors of the Association (if formed), as set forth in Section 7.3 hereof.

(e) Builders - as defined in subparagraph (l) below

(f) Common Area - as defined in Section 10 of Supplemental Declaration hereof.

(g) City - the City of Schertz, Texas

(h) Committee - the Architectural Control Committee (if formed), as provided in Section 5.1 hereof.

(i) County - Guadalupe County, Texas

- (j) **Declarant** – Burkett Live Oak, Ltd., and any successors thereto as provided in Section 2.2 hereof.
- (k) **Declaration** – this Declaration of Covenants, Conditions and Restrictions, as amended from time to time as expressly provided herein.
- (l) **Developer** – Burkett Live Oak, Ltd., and any successors thereto or assignees thereof as provided in Section 2.2 hereof, who undertake the coordination of the development of the land in the Subdivision into lots, or succeed by assignment from the Developer to some or all of the Developer's rights hereunder, but specifically excluding those persons or entities (the "Builders") whose activities are limited to the construction of residences on developed lots, or the purchase and resale of previously developed lots and who have not been assigned any of the Developer's rights hereunder.
- (m) **FHA** – the Federal Housing Administration, or any successor agency or authority thereto.
- (n) **Land** – all of the real property located in the Subdivision including, without limitation, the Common Area (if any), Recreation Center (if any), Restricted Area and all lots.
- (o) **Lot(s)** – any one or more numbered lots or plots as shown or to be shown on the Plat(s) (as hereinafter defined), not including any Common Area (if any), public areas, parks, esplanades, tracts owned or subsequently acquired by any public body, or any plot or tract shown as a reserve lot (whether unrestricted or not) on the Plat(s). Without limiting the foregoing, all references herein to lots shall refer to and include, with respect to any land that has not been platted and fully developed into single-family residential lots, the numbered plots or lots reflected on the Preliminary Plats(s) (as defined below).
- (p) **Lot Approval Date** – with respect to a particular lot, the date that (i) the Plat(s) encompassing such lot are recorded as reflected by the County, or (ii) Developer otherwise determines.
- (q) **Maintenance fund** – as described in Section 8.2 hereof.
- (r) **Owner** – the recorded owner, whether one or more persons or entities (including the Developer and Builders), of fee simple title to a lot, but specifically excluding those having any interest merely as security for the performance of an obligation.
- (s) **Plat(s)** – the plat(s) recorded for the Subdivision as such plat(s) may be replatted and amended from time to time, which plat(s) shall reflect the city approved or proposed City approved platting, location and size of all lots in the subdivision and the location of the streets and easements on, adjacent to, or affecting such lots.
- (t) **Residence** – a freestanding single-family residential dwelling constructed on a lot, as defined in Section 3.1 hereof.
- (u) **Restricted Area** – the portion of the lots subject to any specified use as provided in Sections 5.1 and 5.4 hereof, and also any platted lots specified as Common Area.
- (v) **Subdivision** – shall mean and refer to any separately designated development area of the properties comprised of various types of housing, initially or by supplement or amendment made subject to the Declaration. If separate Community status is desired, the Declarant shall designate in a Supplemental Declaration that such property shall constitute a separate Community. One such Supplemental Declaration is attached hereto as Exhibit "C". In the absence of specific designation of separate Community status, all property made subject to the Declaration shall be considered a part of the same Community.
- (w) **VA** – the Veterans Administration, or any successor agency or authority thereto.

ARTICLE II  
DECLARATION, DECLARANTS, DEVELOPERS AND ASSOCIATION

**Section 2.1 Declaration.**

(a) Declarant hereby declares that all of the land in the Subdivision shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions contained in this Declaration, which easements, covenants, conditions and restrictions (i) are for the purpose of establishing a general scheme for the development and construction of residences on the land in the Subdivision, (ii) are for the purpose of enhancing and protecting the value, attractiveness, appeal and desirability of all land within the Subdivision, (iii) shall run with all land within the Subdivision and be binding on all parties having or acquiring any right, title or interest in the land or any part thereof, and (iv) shall inure to the benefit of each owner of any portion of the land. The easements, covenants, conditions and restrictions contained in this Declaration are made for the mutual and reciprocal benefit of each and every owner of any portion of the land within the Subdivision and are intended to create (i) mutual and equitable servitudes upon each portion of land including each of the lots, tracts and Common Area, if any, in favor of each and all other portions and tracts of land within the Subdivision, (ii) reciprocal rights between the respective owners of any portion of the land, and (iii) privity of contract and estate between the grantees of each portion of the land, their heirs, legal representatives, successors and assigns.

(b) This Declaration may be amended in any respect and in whole or in part at any time by recording an instrument containing such amendment(s) in the deed records of the County. Such amendments may be made by the lot owners if such amendments have been approved by the owners representing at least two-thirds (2/3rds) of (i) all votes of each class of voting membership (if the Association has been created and is in existence as of the date of such vote), or (ii) the votes of the lot owners at a meeting at which a quorum is present if the Association has not been created or is no longer in existence as of the date of such vote, whichever applies; provided, however, until the earlier of (1) the construction of residences on all lots within the Subdivision, or (2) ten (10) years following the recording of this Declaration, no such amendment shall be valid or effective without the joinder of Developer and the Committee (if formed) unless such party waives its rights to consent to such amendment; provided, further, if the Association is formed and FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then as long as the Association has Class B members, any amendment which affects or alters any provisions hereof directly governed or regulated by the FHA or VA shall also be subject to the approval of the FHA, VA and Department of Housing and Urban Development ("HUD") unless such amendments merely correct errors in this Declaration or are required to comply with any requirements imposed by HUD, FHA or VA.

**Section 2.2 Declarant and Developer.**

(a) The initial Declarant of this Declaration is Burkett. After this Declaration is created and filed of record, the Declarant shall have no further rights, duties or obligations hereunder, and all of their rights shall immediately pass to and vest in the Developer hereunder.

(b) The initial Developer shall be Burkett. The Developer shall have the right, but not the obligation, in the event of the transfer of all or any portion of its portion of the Subdivision to another person or entity, to convey all or a portion of the rights and obligations of such Developer to such transferee, whereupon such transferee shall become "Developer" for all purposes hereunder with respect to, but only with respect to the portion of the Subdivision so conveyed to such transferee. The Developer shall not in any way or manner be held liable or responsible for any damages occasioned by violations of restrictions set forth in this Declaration by any person or entity other than itself. If the Developer convey a portion (but not all) of the rights and obligations of such Developer hereunder to one or more transferees, then (i) the rights of such Developer hereunder shall be exercised by the transferring Developer based on the affirmative or consensus majority vote of the persons including the transferring Developer processing such rights, which vote shall be allocated to such persons and weighted based on the number of lots or number of proposed lots owned by such persons, except to the extent such rights are otherwise restricted or specified in the conveyance document, and (ii) the obligations of the transferring Developer hereunder shall

be performed by or enforced against the transferring Developer or the party to whom such obligations have been conveyed by the transferring Developer hereunder. If either Developer conveys all of its land in the Subdivision to owner(s) who do not succeed to the rights and obligations of the transferring Developer hereunder, then the lot owners shall obtain the rights of the transferring Developer herein.

### Section 2.3 Association.

(a) Commencing on the date hereof and continuing until at least ninety-five percent (95%) of all lots in the Subdivision have been sold to lot owners and have residences thereon, Developer shall have the sole right, but not the obligation, to create the Association as a Texas non-profit corporation. After more than ninety-five percent (95%) of all lots in the Subdivision have been sold to lot owners and have residences thereon, the Association may be created and formed (i) by Developers, or (ii) by the lot owners if the lot owners representing at least two-thirds (2/3rds) of all lots assent to create the Association.

(c) Except as stated above, the Declarant and Developer shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration or the Subdivision, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, debts, suits or damages incurred by or on behalf of, or arising in connection with the Association, the Subdivision, or the duties and obligations of the Association pursuant to this Declaration.

### Section 2.4 Annexation.

(a) Additions by Declarant or Developers – The Declarant or Developer, its successors and assigns, shall have the right to bring within the scheme of this Declaration, and without the consent of Owners, additional properties in future stages of the development and within ten (10) years from the date of this instrument. Declarant or Developer, its successors and assigns, shall not be bound to make any additions to the Property. Any additions authorized under this and the succeeding subsections shall be made by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such real property; provided, however, that such Supplementary Declaration may contain such modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the added real properties and as are not materially inconsistent with this Declaration and which do not adversely affect the concept of this Declaration; and the execution thereof by the Declarant and/or Developer shall constitute all requisite evidence of the required approval thereof. In no event, however, shall any such instrument be construed so as to revoke, modify or add to the covenants established by this Declaration as they are applicable to the Property. Furthermore, the following provisions shall apply:

(d) Additional real property may be added and annexed to the land and scheme of the Declaration by (i) the Developer in its sole discretion, or (ii) the consent of the owners representing at least two-thirds (2/3rds) of all lots.

(e) The Association (if formed) may add or annex additional real property to the land and scheme of this Declaration by obtaining the consent of the owners representing at least two-thirds (2/3rds) of all votes of each class of voting membership. If FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then, as long as the Association has Class B members, any Subdivision or annexation of Additional real property to the land and scheme of this Declaration shall also be subject to the approval of FHA, VA and HUD.

(f) In the event any person or entity other than the Developer desires to add or annex additional residential properties and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the Developer and at least two-thirds (2/3rds) of the votes of all lot owners, excluding for such purposes the lots owned by the Developer.

(e) Any real property annexations made pursuant to this Section 2.4, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Developer, Association (if formed) and Committee (if formed) to the real properties added or annexed.

### ARTICLE III RESTRICTIONS ON USE OF LOTS

**Section 3.1 Residential Use.** Except for the lots (if any) on which any Common Area (if any) is located, all lots shall be used only for single-family private residential purposes and related amenities (including, without limitation, such amenities as may be located on the common Area (if any) from time to time as provided herein and the Recreation Center (if any). Except on the Common Area (if any) or on the lot(s) on which the Recreation Center (if any) is located, no building or structure shall be erected, altered, placed or permitted to remain on any lot other than one (1) freestanding single-family residence per lot, which residence may not exceed three (3) stories in height, one in-ground pool, one private garage and appurtenant sidewalks, driveways, curbs, fences and storage or mechanical buildings not otherwise prohibited hereby.

**Section 3.2 Single-Family Use.** Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together or in the same residence as a single housekeeping unit; provided, however, that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family. No building or structure intended for or adapted to commercial, nor any apartment house, duplex, double house, lodging house, rooming house, dormitory, church, school, hospital, sanitarium, servant's quarters or multiple-family dwelling shall be erected, placed, permitted or maintained on any lot. Pool and guest dwellings on certain lots will be allowed with Architectural Control Committee approval only.

**Section 3.3 Restrictions on Resubdivision.** Except for the initial subdivision and platting of the land contemplation or undertaken by the Developer or any replatting undertaken by the Developer, none of the lots shall be divided into smaller lots.

**Section 3.4 Uses Specifically Prohibited.**

(a) No more than two (2) automobiles per dwelling unit may be kept on any lot in such manner as to be visible from any other portion of the Subdivision for any period in excess of seventy-two hours. No automobiles or other vehicles may be parked overnight on any roadway within the Subdivision.

(b) No inoperable vehicle without a current license and registration, machinery, boat, marine craft or motorcycle trailer, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body or similar vehicle or equipment may be (i) parked for storage in the front driveway or front yard of any lot or residence, (ii) parked for storage on any street in the Subdivision, (iii) parked for storage in the side or rear yard of any lot or residence unless concealed from view of other lots at street level. No such vehicles or equipment shall be used as a residence or office temporarily or permanently, provided that this restriction shall not apply to any vehicle or equipment shall be "parked for storage" if it is parked on a lot for more than seven (7) consecutive days without it being driven and used on a public street or thoroughfare.

(c) Trucks with tonnage in excess of one (1) ton and any vehicle with painted or affixed advertisement shall not be permitted to park overnight within the Subdivision except those used by the Developer or a Builder during and directly related to the development of the Subdivision or construction of improvements on a lot in the Subdivision during the period of original construction only.

(d) No vehicles of any size that transports dangerous, flammable, hazardous, corrosive or explosive cargo may pass through or be kept in the Subdivision at any time.



(e) Except to the extent expressly permitted hereby, no vehicles or similar equipment shall be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (with tonnage not in excess of one (1) ton) and pick-up trucks with attached bed campers (with tonnage not in excess of one (1) ton) that are in operating condition with current license plates and inspection stickers and in daily use as motor vehicles on the streets and highways of the State of Texas.

(f) No manufacturing, industrial, oil or gas drilling, oil or gas development, smelting, refining, quarrying or mining operations of any kind shall be permitted in the Subdivision, nor shall oil or gas wells, tanks, tunnels, pipelines other than natural gas lines installed and maintained by a utility company generally serving the public and the residences in the Subdivision, mineral excavations or shafts be permitted upon or in any part of the Subdivision. No derrick or other structure, equipment or machinery designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Subdivision.

(g) No animals of any kind shall be raised, bred or kept on any land in the Subdivision except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the residents of any residence constructed on a lot. Animals are not to be raised, bred or kept for commercial purposes or for fur, clothing or food. Without limiting the foregoing, it is the general purpose of these provisions to restrict the use of the Subdivision so that no person shall permanently or temporarily quarter in the Subdivision live cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks, snakes or any other reptiles, mammals or animals (domesticated, household or otherwise) that may interfere with or threaten the quietude, health or safety of the community. No more than four (4) domesticated household pets will be permitted on each lot. Pets must be restrained or controlled by a leash, rope or similar restraint or a basket, cage, or other container when not confined within the boundaries of the owner's back lot inside a fenced area or within the residence. All lots shall be kept clean and free of pet waste and debris. All animals shall be properly tagged for identification and shall be properly vaccinated, bathed and otherwise kept clean to avoid health or safety risks and concerns.

(h) No portion of the Subdivision shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind including, without limitation, broken or rusted equipment, disassembled, incomplete or inoperable cars or vehicles or equipment and discarded appliances and furniture. No cans, bags, containers or receptacles for the storing or disposal of trash, garbage, refuse, rubble, or debris shall be stored, kept, placed or maintained on any lot where visible from any street except solely on a day designated for removal of garbage and rubbish and on which days only such cans, bags, container, and receptacles may be placed in front of a residence and beside a street for removal, but shall be removed from view before the following day. No incinerators may be erected or maintained in the Subdivision. Materials incident to construction of improvements may be stored on lots during construction so long as construction progresses on such lots without delay.

(i) No garage or other out-building (except for sales offices and construction trailers owned and used by the Developer or Builder on a lot in accordance with the provisions of Section 3.4(n) below) shall be occupied by any owner, tenant or other person on a lot prior to the erection and completion of a residence on such lot.

(j) Except as provided in Sections 3.4(n) and (o) below, no lot, residence or improvement shall be used for commercial or manufacturing purpose of any kind. Except in connection with the activities of the Developer and Builder described in Sections 3.4(m) and (n) below, no activity, whether for profit or not, shall be conducted in the Subdivision which is not related to single-family residential purposes or the development, marketing, construction or sale of the land, lots or residences thereon. No noxious or offensive activity shall be undertaken within the Subdivision, nor shall anything be done which is or may become an annoyance or nuisance to the Subdivision or its residents. Nothing in this Section 3.4(j) shall prohibit an owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art or music lessons so long as such activities do not violate the restrictions set forth above and do not materially

increase the number of cars parked on the street or interfere with adjoining owners' use and enjoyment of their residence and yards.

(k) The drying of clothes in public view is prohibited. The owners and occupants of any lots at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to public view shall construct a suitable enclosure which must be approved in advance by the Committee and must comply with Section 4.4 to screen from public view equipment which is incident to normal residences, such as clothes drying equipment, yard equipment, lawn furniture, pool filtration or composting equipment and stored materials.

(l) Except within fireplaces in the main residential dwelling or in any other place approved by the Architectural Control Committee and except for outdoor cooking in safe and sanitary residential barbecue grills, no burning of anything shall be permitted anywhere within the Subdivision. Open fires and fireworks are specifically prohibited. The discharge of firearms including air rifles is specifically prohibited within the property.

(m) No use shall be conducted in the Subdivision which will violate any of the deed restrictions, other encumbrances of record, zoning or planned use designation, or development or building restrictions or regulations imposed by the City or County, all such may be applicable to the Subdivision from time to time. Furthermore, no use shall be conducted which shall conflict with FHA or VA regulations (if applicable) or any regulation or ordinance of any other applicable governmental entity or agency.

(n) Notwithstanding anything contained in Section 3.4(i) or (j) to the contrary, Developer or a Builder may temporarily use a residence, garage or trailer as a sales, marketing or construction office for the sole purpose of enabling the Developer to develop, construct, market and sell its lots and residences in the Subdivision or in any other subdivision or subdivisions owned by Developer.

(o) Notwithstanding anything contained in this Declaration to the contrary, Developer, the Committee (if formed) or the Association (if formed) may construct, or cause to be constructed, a recreational center (the "Recreation Center") in the Subdivision for the use of all owners of the lots in the Subdivision. If constructed, operation of the Recreation Center shall be managed by the Association, or such other entity as the Developer may designate from time to time.

(p) All exterior lighting on any improvement must be approved by the Developer or the Committee (if formed); provided, however, Christmas and other holiday lights shall be permitted without prior approval. No lighting shall be permitted that constitutes a nuisance or hazard to any residence on any lot within the Subdivision.

(q) All exterior lighting on any improvement must be approved by the Developer or the Committee (if formed); provided, however, Christmas and other holiday lights shall be permitted without prior approval. No lighting shall be permitted that constitutes a nuisance or hazard to any residence on any lot within the Subdivision.

(r) No exterior speakers (other than speakers used by the Builders in conjunction with their model homes), horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any portion of the lots within the Subdivision. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Subdivision so as to be offensive or detrimental to any other portion of the Subdivision or its residents. The Association (if formed), in its sole discretion, shall determine whether an action or activity constitutes a violation of 3.4 (r)

(s) No temporary dwelling, shop, trailer or mobile home of any kind nor any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos, lawn furniture and buildings as specifically approved by Developer or the committee (if formed) for storage of lawn or pool

maintenance equipment, which may be placed on a lot only in areas not visible from any street adjacent to the lot) shall be permitted on any lot except that the Developer and any Builder may have temporary dwellings, trailers or improvements such as a sales office and/or construction trailer on a given lot in accordance with the provisions hereof. No building material of any kind or character shall be placed or stored upon the lot until the owner thereof is ready to commence construction of improvements thereon, and then such material shall be placed within the property lines of the lot upon which the improvements are to be erected.

(t) No structure of a temporary character, such as a trailer, tent, shack, barn or other out-building, shall be used on any land at any time as a dwelling house; provided, however, that Developer or any Builder may maintain and occupy model houses, sales offices and construction trailers in accordance with the provisions hereof.

(u) No individual water supply system, which is not part of the public water supply system serving the entire Community, shall be permitted in the Community.

(v) No individual sewage disposal system, which is not part of the public sewage disposal system serving the entire Community, shall be permitted in the Community.

(w) No air-conditioning apparatus shall be installed on the ground in front of a residence or on the roof of any residence unless screened by the roof structure in a manner approved by the Developer or Committee, (if formed). No air-conditioning apparatus nor evaporative cooler shall be attached to any front wall or window of a residence.

(x) Except with the prior written permission of the Developer or Committee (if formed), no antennas, dishes or other equipment for receiving or sending audio or video messages or transmissions shall be permitted in the Community except antennas for private AM and FM radio reception and UHF and VHF television reception. All antennas shall be located inside the attic of the residence and one satellite dish or other similar instrument or structure may be placed in the backyard of each lot so long as it does not exceed the maximum size of 10" x 1" and is completely screened from view from any street, alley, park or other public area.

(y) No utility lines, including, but not limited to, wires or other devices for the communication 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. Notwithstanding any provision herein to the contrary, Declarant and other builders are hereby exempt from compliance with this Section 3.4 (y).

(z) No fences, walls, hedges or shrubs which obstruct sight lines at elevations between two (2) and six (6) feet above the roadway may be placed or permitted to remain on any corner lot.

(aa) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings as approved by the Developer or Committee (if formed) for storage of lawn and pool maintenance equipment, no building previously constructed elsewhere shall be moved onto any lot, it being intended that only new construction be placed and erected thereon.

(bb) Within platted or limited use easements on each lot, no permanent structures, paving other than driveways, sidewalks and flatwork installed in compliance with all applicable codes and laws, planting or materials shall be placed or permitted to remain which may damage or materially interfere with the installation, operation and maintenance of utilities or change, obstruct or retard the flow of water through or within drainage channels and/or easements.

(cc) After the Developers have developed the lots, the general grading, slope and drainage plan of the lot may not be altered, nor may any dams, burms, channels or swales be constructed or excavated, without the prior approval of Developer or Committee (if formed), the city (if applicable) and other appropriate agencies having authority to grant such approval.

(dd) No sign of any kind shall be displayed to the public view on any lot except one (1) alarm monitoring sign of not more than one (1) square foot and one (1) sign of not more than five (5) square feet advertising the property for rent or sale, or signs used by Developer or any Builder to advertise the Property or other Properties. Any such signs may not (i) describe the condition of the residence or lot, (ii) describe, malign or refer to the reputation, character or building practices of Developer, Builder or any other lot owner, and (iii) discourage or otherwise impact or attempt to impact anyone's decision to acquire a lot or residence in the subdivision. Declarant, Developer, Association (if formed) or their respective agents shall have the right to remove all signs, billboards or other advertising structures including, without limitation, political or private sale (such as "garage" sale) signs that do not comply with this restriction, and in doing so shall not be subjected to any liability for trespass or any other liability in connection with such removal.

(ee) All containers and other facilities for trash disposal must be located and screened in a manner approved by the Developer or Committee (if formed).

(ff) All exterior mechanical equipment, including, without limitation, heating, air-conditioning and ventilation ("HVAC") equipment, shall be located and screened in manner approved by the Developer or Committee (if formed). Without limiting the foregoing, no window air conditioning units shall be permitted in any residence or garage on any lot.

(gg) All construction shall comply at all times with this Declaration and all other applicable deed restrictions, encumbrances of record, zoning ordinances and requirements, planned use and development restrictions, building codes, FHA and VA requirements and regulations and all other applicable ordinances and regulations.

(hh) No exterior burglar bars will be permitted on any doors, windows or other openings on a dwelling situated in the Community. Burglar bars, if installed, must be situated within the interior of such dwelling.

(ii) House numbers identifying the address of each house must be placed so that the numbers can be easily read from the street. Size, color and material of the numbers must be compatible with the design and color of the house.

(jj) Basket ball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed on any street in the Community or where same would be visible from an adjoining street or lot without the prior written consent of the Developer or Committee (if formed). The Developer or Committee (if formed) shall have the authority to establish guidelines for the placement and design of basketball goals and no basketball goal shall be kept or maintained within sight of any street except in accordance with any such guidelines established.

(kk) All driveways shall be surfaced with concrete. No asphalt driveways shall be permitted.

(ll) All sidewalks shall conform to all applicable City, FHA and VA specifications and regulations.

(mm) Mailboxes shall be constructed of a material and design approved by the Developer or Committee (if formed) and the United States Postal Service.

(nn) All signs advertising the entire Property (but not limited to the Property) or any substantial part thereof shall be approved by the Developer or Committee (if formed). All signs shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. All signs advertising the Community shall be removed after the latter of

(a) all buildings to be initially constructed on the advertised lot(s) have been sold or (b) model homes are not being used by the Builder or, (c) Developer has completed selling and construction activities for other communities in the vicinity. Developer, the Association or the Committee (if formed) may remove from the Community or any surrounding area any signs, which do not comply with this Section.

#### ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

**Section 4.1 Appointment** The Architectural Control Committee (the "Committee") consisting of three (3) members may, but shall not be obligated to be formed by the Developer during the period of time that the Developer owns any interest in any lot, and thereafter (a) by the Board members of the Association (if formed), or (b) by the lot owners representing a majority of the lots. If the Committee is formed by the Developer, then (i) Developer shall initially designate and appoint the members, each appointee to be generally familiar with the residential and community development design matters within other Subdivisions with which Developer has been associated and knowledgeable about those concerns articulated in this Declaration, and (ii) within ninety (90) days after the date that all of the lots have been sold by the Developer, the Board (if the Association has been formed and is in existence as of such date) or the lot owners (if the Association has not been created or is no longer in existence as of such date) shall (A) confirm and approve the members of the Committee, or (B) appoint one (1) or more successor members of its/their own choosing to the Committee, with such succession to be effective thirty (30) days after such appointment of such successor(s).

**Section 4.2 Term; Successors; Compensation; Liability.**

(a) Each member of the Committee shall serve on the Committee until such member resigns or is removed by the party who appointed such member to serve on such Committee. Without limiting the foregoing, the appointing party may remove its appointed member of the Committee at any time for any reason.

(b) In the event of the death, resignation or removal by the appointing party of any member of the Committee, such appointing party shall have full authority to designate and appoint a successor within a reasonable period of time. If no such appointment is made on a timely basis, the remaining member(s) of the Committee shall appoint a successor member.

(c) No member of the Committee shall entitle to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration.

**Section 4.3 Authority**

(a) After the initial platting of the land in the Subdivision, the Subdivision shall not be replatted or re-subdivided other than by Developer and no landscaping shall be undertaken and no building, fence, wall or other structure shall be commenced, erected, placed, maintained or altered on any lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made by any party other than Developer, until all plans have been approved by Developer, and if a Committee has been formed and is in existence as of such date then until all plans therefore have been submitted to and approved in writing by a majority of the members of the Committee, as to:

(i) conformity and harmony of the proposed replat and any landscape plan to the existing development in the Subdivision, surrounding areas, community standards and other developments with which Developer are associated;

(ii) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper facing of main elevation with respect to nearby streets;

(iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other lots in the Subdivision; and

(iv) the other standards set forth within this Declaration or matters in which Developer or the Committee (if formed), whichever applies, have been vested with the authority to render a final interpretation and decision.

Without limiting the foregoing, Developer or the Committee (if formed), whichever applies, have been authorized and empowered to consider and review any and all aspects of platting, construction and landscaping which may, in the reasonable opinion of such party, affect the living enjoyment of one or more lot owners or the general value of lots in the Subdivision. In considering the harmony of external design between existing structures and a proposed building being erected, placed or altered, the Developer or the Committee (if formed), whichever applies, shall consider only the general appearance of the proposed building as that can be determined from front, rear and side elevations on submitted plans.

(b) Developer, or the Committee (if formed) acting pursuant to a majority vote of its members, whichever applies, shall have the right, power and authority to enforce the covenants, conditions, restrictions and all other terms contained in this Declaration relating to the matters within its purview as set forth herein. If the Developer fails or refuses to enforce this Declaration as stated above, then the Association (if formed) shall have the right, power and authority to enforce this Declaration.

(c) Prior to the formation of the Committee (if ever) and during any periods of time after such formation that the Committee no longer exists, all consents and approvals reserved to the Developer shall be made solely by the Developer.

(d) All consents and approvals reserved to the Developer may be made and provided by the Committee (if formed) or the Association (if formed) only after the (i) Developer has relinquished its duties hereunder to the Committee or Association or sold or otherwise disposed of all its interest in all of its lots and other property in the Community, or (ii) Developer elects not to exercise such rights, easements and authority.

#### **Section 4.4 Procedure for Approval**

(a) Each of the following documents and all modifications thereof must be submitted in writing to the Developer or the Committee (if formed), whichever applies, and such party's approval must be obtained, prior to the document's submission to the City or implementation:

- (i) preliminary replat;
- (ii) final replat;
- (iii) engineering plans and specifications;
- (iv) landscaping, fencing and general development plans; and
- (v) architectural, building and construction plans for each residence, showing the nature, kind, shape, height, materials and location of all landscaping and improvements on each lot, and specifying and requested variance from the setback lines, garage location or other requirements set forth in this Declaration, and, if requested by Developer or the Committee (if formed), samples of proposed construction materials.

(b) All documents must be submitted in duplicate and must be sent to the Developer or the Committee (if formed) by hand delivery or certified mail; provided, however, that the Developer shall not be obligated to submit or obtain approval of such documents as long as the Developer own any lot(s) in the Subdivision. At such time as the submitted documents meet the approval of the Developer or the Committee (if formed), one complete set of the submitted documents will be retained by such party and the other complete set shall be marked "Approved", signed by such party and returned to Builder or its respective designated representative. If disapproved by such party, one set of documents shall be returned marked "Disapproved" and shall be accompanied by a statement of the reasons for disapproval, which statement shall be signed by such party. Such

party's approval or disapproval shall be in writing. In no event shall such party give oral approval of any documents. Notwithstanding the foregoing, if such party fails to respond to any submitted documents within ninety (90) days after the date of submission, the matters submitted shall be deemed to be approved.

**Section 4.5 Standards** Developer or the Committee (if formed), whichever applies, shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision consistent with the standards set forth in this Declaration, provided that such party shall have sole discretion with respect to taste, design and all standards specified herein. One objective of such party is to conform generally to community standards and prevent unusual, radical, curious, odd bizarre, peculiar or irregular structures from being built or maintained in the Subdivision. Such party shall also have the authority, among other things, to require as a minimum, a six (6) to twelve (12) foot roof pitch or slope on the main structure of the residence and a minimum of a four (4) to twelve (12) foot roof pitch or slope on the garage or porches, subject to such party's ability to permit slight variances for garage and porch roof pitch or slope, to require that the exterior surfaces of the chimney chases be covered with brick, masonry or wood, to prohibit the use of lightweight composition roof material, to require that the colors of roofing materials be earth tones, to require the use of certain types of divided light windows (such as bronzed, white or black), to prohibit or regulate the use of solar or heating panels, to regulate the construction and maintenance of awnings and generally to require that any plans meet the standards of the existing improvements on neighboring lots. Such party may from time to time publish and promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.

**Section 4.6 Termination.** The Committee shall cease to exist on the date on which, with the prior written approval of Developer (if the committee was created and sanctioned by the Developer and the Developer has not relinquished control or its right to give such approval) or the Board (if the Association has been formed and is still in existence as of such date) or the lot owners representing a majority of the votes of the lot owners (if the Association has not been created or is no longer in existence as of such date and the Developer has relinquished control or its right to give such approval), or all the members of the Committee, file a document declaring the termination of the Committee. If there is no Committee in authority, then no approval by the Committee shall be required under this Declaration, and variations from the standards set forth in this Declaration shall then be made in accordance with the general development standards as reflected in the approved plans, construction materials, landscaping and other matters (i) by Developer, and (ii) by the Association (if formed) if Developer fails to take action relating thereto or after the Developer has relinquished control hereunder.

**Section 4.7 Liability of Developers and the Committee.**

(a) Developer and the members of the committee shall have no liability for decisions made by them so long as such decisions are made in good faith and are not discriminatory, arbitrary or capricious. Any errors in or omissions from the documents submitted to the Developer or committee (if formed) shall be the responsibility of the entity or person submitting the documents, and Developers or Committee (if formed) shall have no obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, City codes and regulations, FHA or VA regulations, state status or the common law, whether the same related to lot lines, building lines, easements or any other issue.

(b) Declarant and Developer shall have no responsibility or liability for (i) the creation, selection, management or operation of the Committee, (ii) any actions taken or omitted to be taken by or on behalf of the Committee as a result of, in connection with, under, or pursuant to this Declaration or the Subdivision, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, debts, suits or damages incurred by or on behalf of, or arising in connection with the Committee, the Subdivision or the duties and obligations of the Committee pursuant to this Declaration.

**ARTICLE V**  
**SPECIAL FENCING AND LANDSCAPING PROVISIONS**

**Section 5.1 Fences, Walls, Sprinkler Systems and Other Improvements in the Restricted Area.**

Developer and/or the Association, whichever applies, shall have the right, but not the obligation, to erect, install, maintain, repair and/or replace fences, walls, subdivision monuments, signs, improvements and/or sprinkler systems within those portions (the "Restricted Area") of any lot which are located between the property lines of such lot and the setback or sight lines of such lot as established by the Plat(s), this Declaration or any governmental entity. If any fence, wall, subdivision monument, sign, improvement or sprinkler system is erected or installed on any lot(s), such fence, wall, subdivision monument, sign, improvement or sprinkler system shall be the property of the owner of the lot on which such fence, wall, subdivision monument, sign, improvement or sprinkler system is erected or installed, subject to the easements and rights of Developer as set forth below. No fence, wall or sprinkler system shall be erected or installed in the Restricted Area by the owner of the affected lot without the prior written consent of Developer, provided that any fence, wall or sprinkler system installed by the Developer in the Restricted Area may be maintained, repaired and/or replaced by the owner of the affected lot.

**Section 5.2 Limited Use Easement.** Those lots, which abut Lot 1 and 7, Block 5 and Lot 1, Block 1 are specifically granted a limited use easement for the following limited purposes:

1. The abutting owner may erect a fence extending from said owners lot line to connect with the fencing of said adjacent lot line erected by Developer or the Association (if formed) provided such fencing is pre-approved by the Developer or committee (if formed).
2. The area inside the fence but outside said owners property line may be used and enjoyed by the abutting owner subject to said owner's maintaining said property including the fencing thereon and using the same in compliance with these restrictions. Owner shall not alter or obstruct the surface drainage in the limited use area but can landscape the same after obtaining approval of the landscape plan by the Developer or the Committee (if formed).
3. Owner's limited use easement shall be subject at all times to the right of Developer or the Association (if formed) to enter the area covered by the easement for the purpose of maintaining fencing or other improvements and such easement shall be subject to revocation if any of the provisions contracted on this paragraph are violated.

**Section 5.3 Landscaping.** Developer shall have the right but not the obligation to grade, plant and/or landscape and maintain, repair, replace and/or change such grading, planting and landscaping on any portion of the Restricted Area of any lot provided that such grading, planting and landscaping conforms with the landscaping plan approved by the Developer or Committee (if formed) as set forth above. In the event Developers do not landscape the Restricted Area, the owner of the affected lot may plant grass and, with the prior written consent of Developer, may landscape, install a sprinkler system and plant trees and shrubs in the Restricted Area; provided, however, in no event shall an owner erect or maintain any structure, paving or improvement other than landscaping and a sprinkler system in the Restricted Area.

**Section 5.4 Restricted Area and Fence Encroachment Easement.**

(a) Developer shall have the right and an easement to enter upon the Restricted Area for the purpose of exercising the discretionary rights set forth in Section 5.1 and 5.2 hereof.

(b) Each owner, as grantor, grants to each owner of each immediately adjacent lot, as grantee, a non-exclusive reciprocal easement, license, privilege and right-of-way for the encroachment of any common fence upon such grantor's lot and for the right to attach any adjacent lot boundary fences to any common fence; provided, however, that no such encroachment shall extend more than two (2) feet into such grantor's lot and no such attachment shall irreparably and visibly damage the common fence. Without limiting the foregoing, the grantee shall have the easement, license, privilege and right-of-way for free, continuous and uninterrupted use of ingress and egress over and across the encroachment area which is located between the grantor's property line and the common fence, provided that the grantee agrees (i) not to construct or permit to exist within or on the encroachment area any building, structure or other



obstruction, (ii) to immediately repair any portion or condition of the encroachment area which is not in good condition or which is in need of repair, and (iii) to mow, water, weed and otherwise maintain and repair, at its sole cost and expense, the encroachment area in good condition and in accordance and compliance with all laws, rules, regulations, restrictions and covenants affecting the encroachment area and in accordance and consistent with the standards maintained in the Subdivision. In the event that grantee fails or refuses to reasonably maintain and repair the encroachment area as generally described above, then the grantor may, if such condition continues after expiration of ten (10) days after written notice of such failure to the grantee, perform the maintenance and other duties described herein in which event the grantee shall immediately reimburse grantor all costs and expenses associated with maintaining or performing such duties as generally described above.

(c) Each grantee hereby grants to each grantor as such terms are used in Paragraph (b) above, a non-exclusive reciprocal easement, license, privilege and right-of-way to utilize and travel across such portions of the grantee's property as may be necessary or appropriate to provide access and ingress and egress to, and to maintain, repair, reconstruct and replace, their common fence. The grantor and grantee hereby agree to contribute equally to the maintenance, repair, reconstruction and replacement of any common fence, and if either grantor or grantee refuse to contribute or to participate in such maintenance, repair, reconstruction or replacement, then the other party may perform such duties and take such actions as it deems appropriate, and the non-performing parties shall reimburse the performing party for one-half (1/2) of all costs and expenses associated therewith. Without limiting the foregoing, in the event that the common fence needs to be replaced or substantially repaired which involves substantial renovation or reconstruction of the common fence either party reserves the right, subject to all applicable laws, rules, regulations, restrictions and covenants, to relocate the common fence to the common property line between the grantor's and grantee's properties in which event the encroachment easement described in Paragraph (b) above shall immediately terminate upon completion of such renovation, reconstruction and relocation of the common fence to the common property line.

(d) The easements, licenses, privileges and rights-of-way described in this Section 5.4 shall constitute covenants running with each of the affected adjacent lots pursuant to applicable law for the benefit of each of the affected adjacent lots and the owners of such affected adjacent lots and their respective successors and assigns, and shall burden each of such affected adjacent lots, the owners of such affected adjacent lots and their successors and assigns.

**Section 5.5 Termination.** Upon notice from Developer, recorded in the public records of the County, Developer may terminate any or all of its rights, easements and authority pursuant to this Article V.

**Section 5.6 Association's and Lot Owner's Rights.** Notwithstanding any contrary provision herein, the Association (if the Association has been formed) and the lot owners (if the Association has not been formed or is no longer in existence) shall have the right, but not the obligation, to exercise, at the Association's or lot owners' sole expense, any of Developer's rights, easements and authority pursuant to this Article V, but only to the extent that the Developer has relinquished its rights herein or elects not to exercise such rights, easements and authority. Developer's termination of its rights pursuant to Section 5.6 shall have no effect on the Association's or lot owners' rights pursuant to this Section 5.7

## **ARTICLE VI** **MAINTENANCE**

**Section 6.1 Property and Lot Maintenance** Prior to completion of the development of the entire Subdivision and construction of a residence on each lot, all vacant lots and undeveloped portions of the Subdivision shall be kept mowed and free of trash and construction debris by the owner thereof. After the Lot Approval Date with respect to a particular lot, the owner and occupant of each lot shall cultivate an attractive ground cover or grass on all areas visible from the street, shall maintain all areas in a sanitary and attractive manner and shall edge the street curbs that run along the property line and the sidewalks and driveway located on the lot. Grass, weeds and vegetation on each lot must be kept mowed at regular intervals so as to maintain the property in a neat and attractive manner. No vegetables shall be

grown in any yard that faces a street unless completely screened from public view by fences, with comply with the provisions of this Declaration. No owner shall permit weeds or grass to grow to a height of greater than six (6) inches upon its lot. Upon failure of the owner of any lot to maintain such lot (whether or not developed), Developer may, as its option, have the grass, weeds and vegetation cut as often as necessary in its judgment, and the owner of such lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice to Developer from the Association (if formed) or the City stating the Association's or City's intent to exercise such right, the Association or City, whichever applies, shall have the right, in lieu of Developer, to have the grass, weeds and vegetation cut as provided above, and upon exercise of such right, the owner of such undeveloped property or the owner of the lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association or City, whichever applies, for the cost of such work. These provisions shall be construed to create a lien in favor of the performing party against such property for the cost of such work or the reimbursement sought for such work performed on such property. In the event that the Association has not been formed or is no longer in existence, then the rights of the Association described herein may be exercised by the lot owners as set forth in Section 10.7(b) herein.

**Section 6.2 Maintenance of Improvements.** Subject to the provisions of this Article VI, each owner shall maintain the exterior of all buildings, fences, walls and other improvements on his lot in good condition and repair, shall replace worn and rotten parts, shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate. Upon failure of the owner of any lot to maintain the exterior of all buildings, fences, walls and other improvements on his lot, Developer may, at their option, perform such maintenance as often as necessary in their judgment, and the owner of such lot shall be obligated, when presented with an itemized statement, to reimburse Developers for the cost of such maintenance work. In the event Developer shall fail to exercise their right granted under the preceding sentence within ten (10) days following written notice from the Association (if formed) or the district to Developer of the Association's or District's intent to exercise such right, the Association or District shall have the right, in lieu of Developer, to perform such maintenance as provided above, and upon exercise of such right, the owner of such lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such maintenance work. These provisions shall be construed to create a lien in favor of the performing party against such lot for the cost of such work or the reimbursement sought for such work or the reimbursement sought for such work performed on such lot. In the event that the Association has not been formed or is no longer in existence, then the rights of the Association described herein may be exercised by the lot owners as set forth in Section 10.7(b) herein.

**ARTICLE VII**  
**MEMBERSHIP AND VOTING RIGHTS IN THE**  
**ASSOCIATION AND VOTING RIGHTS OF THE LOT OWNERS**

**Section 7.1 Membership in the Association.** In the event the Association is formed and created, then, upon formation and creation of the Association, every owner of a lot shall be a member of the Association, which shall function as a homeowner's association for the owners of lots in the Subdivision. Membership shall be appurtenant to, and shall not be separated from, ownership of a lot. Without limiting the foregoing, the owner(s) (including the Developer) of land which has not been final platted and fully developed shall have membership in the Association as if the land had been final platted and fully developed into the lots reflected on the Preliminary Plat, and shall be entitled to vote for each such proposed lot in accordance with the provisions of Section 7.2 hereof.

**Section 7.2 Voting Rights.**

(a) In the event the Association is formed and created, the Association shall have two (2) classes of voting membership:

(i) Class A - Class A members shall be all owners (other than Class B members) and 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, but the vote for such lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any lot.

(ii) Class B - Class B member(s) shall be the Developer, who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership at the earlier to occur of (A) the date when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or (B) ten (10) years from consummation of the first sale of a lot with a residence thereon in the Subdivision.


(b) In the event the Association is not created or is no longer in existence as of a particular date, then, on all matters submitted to or which must be approved by the lot owners, (i) Developer shall be entitled to three (3) votes for each lot or proposed lot owned by the Developer, and (ii) the other owner(s) of each lot shall be entitled to one (1) vote for each lot. In this regard, any reference in this Declaration to approval or action by the lot owners shall require the affirmative vote of such lot owners taking into account the weighted voting set forth above.

### **Section 7.3 Board of Directors.**

(a) If the Association is created, the members of the Association shall elect the board of directors (the "Board") of the Association subject to the provisions of subparagraph (b) hereof, and the Board shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association. Subject to the provisions of Section 4.1, the Board shall appoint the Committee in the manner set forth in Section 4.1 hereof.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in these Declaration to the contrary, as long as the Developer own any lot(s) in the Subdivision, the Developer shall be entitled to appoint at least one (1) member of the Board, or such larger number of members as their lot ownership and weighted voting may warrant.

**Section 7.4 Bylaws.** The Association (if created) may make whatever rules and bylaws it deems desirable to govern the Association and its members; provided, however, any conflict between such bylaws and the provisions hereof shall be controlled by the provisions hereof.

 **Section 7.5 Inspections Rights.** Each owner shall have the right to inspect and examine the books, records and accounts of the Association at reasonable times upon reasonable written notice, provided that such inspection and examination shall be at such owner's sole cost and expense.

## **ARTICLE VIII ASSESSMENTS**

**Section 8.1 Creation of Lien and Personal Obligation of Assessments.** No mandatory assessments shall be due prior to the Lot Approval Date. From and after the Lot Approval Date, Developer, for each fully developed lot in the Subdivision, hereby covenants, and each owner (other than the Developer), by acceptance of a deed to a lot, is deemed to covenant and agree to pay a maintenance account or fund established by Developer or the Association (if the Association has been formed and is in existence as of such date) (a) annual assessments, and (b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection and reasonable attorney's fees, shall be a charge on each lot and, if unpaid as described in Section 8.5 hereof, shall constitute a continuing lien upon the lot against which each such unpaid assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees shall be the personal obligation of the owner of such lot at the time when the assessment came due. The personal obligation for delinquent assessments shall not pass to such owner's successors in

title unless expressly assumed by them, provided that the lien for such assessments shall continue and may be enforced against the lot.

**Section 8.2 Annual Assessment.**

(a) From an after the Lot Approval Date, each lot shall hereby be subject to an annual assessment for the purpose of creating a fund to be designated and known as the "maintenance fund". The annual assessment will be paid by the owner of each lot to an account or fund established by Developer or the Association (if the Association has been formed and is in existence as of such date) annually in advance or in such intervals and methods as may be established by Developer or the Board from time to time. The annual assessment for unimproved lots shall be one-fourth (1/4) the annual assessment for improved lots. A lot shall be an "Improved Lot" when construction of a Residence thereon is completed, and a closing of a sale thereof has taken place, or when a Residence on the lot has been occupied as a residence, whichever first occurs. All other lots shall be "Unimproved Lots". **The assessment per lot for the year in which the Lot Approval Date occurs shall be \$325.**

(b) The assessment for a particular lot for the calendar year in which the Lot Approval Date occurs shall be prorated for such calendar year for the period commencing on the Lot Approval Date and ending on December 31 of such calendar year. The rate at which each lot will be assessed for subsequent years will be determined annually at least thirty (30) days in advance of each annual assessment by the party creating the assessment as set forth above, provided that, without a vote of the membership as described in the next sentence, the annual assessment, if created by the Association, may not be increased by the Association in any year by an amount in excess of ten percent (10%) above the previous year's annual assessment. The annual assessment may be increased by the Association by an amount in excess of ten percent (10%) of the annual assessment for the previous year by the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose at which a quorum is present. The notice and quorum requirements for such meeting are the same as those set forth in Section 8.4 for special assessments for capital improvements. The assessments for each lot shall be uniform. Developer, or the Association, shall upon demand and upon payment of a reasonable fee, furnish a certificate signed by an officer of Developer or the Association setting forth whether the assessments on a specified lot have been paid.

**Section 8.3 Purposes:** Developers or the Association (if formed), whichever applies, shall use the proceeds of the maintenance fund for the use and benefit of the Subdivision. Such uses and benefits may include, by way of example and not limitation, any and all of the following:

(a) maintaining, operating, managing, repairing, or improving any landscaping, lighting, sprinkler systems, walls, fences, subdivision monuments, signs, perimeter access gates, and streets and other features located in any Restricted Area and other common areas owned by Developer or the Association, whichever applies, as designated on the Plat(s). All of the items and features referenced in this subparagraph (a) are hereinafter collectively referred to as the "Common Area";

(b) mowing the grass, maintaining the gravel and maintaining signs in or adjoining any rights-of-way or easements in the event the City or County fails to maintain such areas;

(c) paying legal charges and expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the land to which the maintenance fund applies;

(d) paying reasonable and necessary expenses in connection with the collection and administration of the assessments;

(e) paying insurance premiums for liability and fidelity coverage for Developer, Committee and/or the Association and/or their officers and directors, employing policemen and watchmen, caring for vacant lots and doing any other things which are necessary or desirable in the option of Developers or the Board, whichever applies, to keep the lots neat, secure and in good order, or which are considered of

general benefit to the owners or occupants of the Subdivision, it being understood that the judgment of Developer or the Board, whichever applies, in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith; and

(f) making additional deposits to the capital reserve fund for the long-term repair and replacement of capital items (such as entry gates, and streets owned and maintained for the benefit of the lot owners).

**Section 8.4 Special Assessments for Capital Improvements.**

(a) In addition to the annual assessments authorized above, the Developer (if the Association has not been formed or is no longer in existence as of such date) or the Association (if the Association has been formed and is in existence as of such date) may levy, in any calendar year after the Lot Approval Date, a special assessment, applicable to the year only, for the purpose of defraying, in whole or in part, the cost of any indemnification set forth in the Articles of Incorporation or Bylaws for the Association (if formed) and any construction, reconstruction, repair or replacement of a capital improvement on or to the Recreation Center (if any), Restricted Area or Common Area (if any) in that same or immediately subsequent calendar year, including walls, fences, lighting, gates, streets, subdivision monuments, signs and sprinkler systems. **At the initial closing of each residence constructed on a Lot in the community, a Special Assessment for maintenance of Capital Improvements in the amount of \$100 will be charged to each buyer and forwarded to the Homeowner Association's management company to be placed in an interest bearing account.**

(b) Any special assessment made by the Association pursuant to this Section 8.4 must have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose not less than ten (10) days nor more than fifty (50) days in advance of such meeting. At the first such meeting called by the Association, the presence of members (in person or by proxy) entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, provided that the required quorum at the subsequent meeting shall be one-half (1/3) of the minimum required quorum at the preceding meeting. No rescheduled meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

**Section 8.5 Effect of Nonpayment of Assessments; Remedies of Developers or the Association.**

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid in full at the rate of ten percent (10%) per annum. Developers (if the Association has not been created or is no longer in existence as of such date) or the Association (if the Association has been formed and is in existence as of such date) may bring an action at law against the lot owner personally obligated to pay the same, may foreclose the lien against the lot and/or may pursue any other legal or equitable remedy available to it. No owner may waive or otherwise avoid liability for the assessment provided for herein by non-use of the Recreation Center (if any) or any Common Area or by abandonment of its lot.

**Section 8.6 Subordinated Lien to Secure Payment.** The lien on any particular lot created as the result of the non-payment of any assessment provided for herein shall only be subordinate to the liens of any valid first lien mortgage or deed of trust secured by such lot. Sale or transfer of any lot shall not impair the enforceability or priority of the assessment lien against such lot.

**Section 8.7 Duration.** The assessments created for herein will remain effective for the full term (and extended term, if applicable) of the Declaration

**Section 8.8 Declarants and Developers Not Liable for Association Deficits.** Notwithstanding anything contained in this Declaration to the contrary, Declarant and Developer shall not be liable for any liabilities, obligations, damages, causes, causes of action, claims, debts, suits or other matters incurred by or on behalf of the Association or lot owners or for any deficits or shortfalls incurred or realized by or on behalf of the Association or lot owners in connection with the Subdivision or this Declaration. Declarant and

Developer's sole liability and obligation hereunder shall be limited to the assessments assessed against and lots owned by the Declarant or Developer, whichever applies.

**ARTICLE IX**  
**PROPERTY RIGHTS IN COMMON AREA**

**Section 9.1 Common Area Defined and Property Rights in Common Area.** Common Areas are those areas designated as such in the Supplemental Declarations Attached hereto and any subsequent Supplemental Declarations filed at record. The Developer, Association (if formed) and their successor, assigns, contractors, agents and employees shall have the right and easement to enter upon the Common Area (if any) for the purpose of exercising the rights set forth in this Declaration.

**Section 9.2 Common Area Easements.** Every owner shall have a non-exclusive right and easement of enjoyment in and to any Common Area, which right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Developer or Association (if formed) to charge reasonable admission and other fees for the use of any recreational facility (including, without limitation, the Recreation Center, if any) situated upon any Common Area;

(b) the right of the Developer or Association (if formed) to suspend the voting rights and rights to the use of the recreational facilities by an owner or occupant of a lot for any period during which any assessment against such owner's lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of this Declaration or the published rules and regulations of the Developer or Association (if formed); and

(c) the right of the Developer or Association (if formed) to dedicate or transfer all or any part of any Common Area to any public agency, authority or utility company for such purpose and subject to such conditions as may be agreed to by the Developer or Board (if the Association is formed); provided, however, that no such dedication or transfer shall be effective unless an instrument has been recorded and has been signed by two-thirds (2/3rds) of (i) the votes allocated to the lot owners as provided herein (if the Association is not formed or is no longer in existence as of such date), taking into account the weighted voting described herein, and (ii) each class of members evidencing their agreement to such dedication or transfer (if the Association has been formed and is in existence as of such date).

**Section 9.3 Delegation of Rights.** Any owner may delegate, in accordance with this Declaration or the bylaws of the Association, his right of enjoyment to the Common Area (if any) and facilities to the members of such owner's family or to persons residing on the lot under a lease or contract to purchase.

**Section 9.4 Conveyance of Common Area to Association.** Developer shall convey the Common Area (if any) to the Association (if formed), free and clear of any encumbrances other than as may be created by this Declaration or imposed by the City, County or other applicable governmental authority, (a) prior to the first VA loan guaranty or direct loan in the Subdivision if the Association is formed prior to such date, (b) if the Association is formed at a later date, then within a reasonable period of time after the Association is formed, or (c) if the improvements on the common Area will be completed at a later date than the dates specified in subparagraphs (a) or (b) above, then within a reasonable period of time after the completion of such improvements, subject to any required FHA and/or VA approvals.

**Section 9.5 Dissolution of the Association.** The Association may be dissolved by a written assent signed by the lot owners representing not less than two-thirds (2/3rds) of the votes of each class of members. In the event the Association is dissolved, the Common Area (if any) shall be conveyed to either (a) another non-profit Texas corporation, association, trust or other organization devoted to purposes similar to those of the Association, or (b) an appropriate governmental agency to be used for purposes similar to those for which the Association was created.

ARTICLE X  
GENERAL PROVISIONS

**Section 10.1 Utility Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved and shown on the Plat, including, without limitation, an easement over the front and rear ten (10) feet of each lot. Easements are or will be also reserved on the Plat for the installation, operation, maintenance and ownership of utility service lines from the lot lines to the residences. Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically developing the land and installing improvements in the Subdivision. The owner of a lot shall mow weeds and grass and shall keep and maintain in a neat and clean condition any easement that may traverse a portion of the owner's lot.

**Section 10.2 Recorded Plat.** All dedications, limitations, restrictions and reservations shown on the Plat(s) are and shall be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by Developer or any Builder or other owner conveying lots in the Subdivision whether specifically referred to therein or not.

**Section 10.3 Mortgages.** It is expressly provided that the breach of any of the conditions in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to lots acquired by foreclosure, trustee's sale or otherwise, but only as to any breach occurring after such acquisition of title.

**Section 10.4 Term.** The foregoing covenants and restrictions shall run with and bind all land within the Subdivision and shall remain in full force and effect for a term of thirty (30) years after this Declaration is recorded, and shall be automatically extended for successive periods of ten (10) years unless amended as provided herein.

**Section 10.5 Severability.** If any condition, covenant or restriction herein contained shall be invalid which invalidity shall not be presumed until the same is determined by the unappealable judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

**Section 10.6 Binding Effect.** Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the land within the Subdivision, it being understood that, except as otherwise expressly provided herein with respect to Declarant, Developer and the Committee (if formed), such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Subdivision. This instrument, when executed, shall be filed of record in the deed records of the County so that each and every owner or purchaser of any portion of the land within the Subdivision is on notice of the easements, conditions, covenants, restrictions and agreements herein contained.

**Section 10.7 Enforcement.**

(a) Except as limited or restricted hereby, Declarant, Developer, the Committee (if formed), the Association (if formed) and the owners of each lot and any portion of the land within the Subdivision shall have the easement and right to have each and all of the foregoing restrictions, conditions and covenants herein faithfully carried out and performed with reference to each and every portion of land within the Subdivision, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each portion of land within the Subdivision, without reference to when it was sold, the right and easement to have such restrictions, conditions and covenants strictly complied with, such right to exist with the owner of each portion of the land within the Subdivision and to apply to all lots in the Subdivision. Failure by any owner, Declarant, Developer, Committee (if formed) or Association (if formed) to enforce any covenant or restriction herein contained or to take any action herein permitted shall in no event be deemed as a waiver of the right to do so thereafter. The rights of enforcement granted Declarant, Developer, Committee (if

formed) and Association (if formed) under this Declaration are personal rights and in no other event shall the owner of any land except land in the Subdivision have any right of enforcement with respect to this Declaration. In addition, the restrictions, conditions and covenants set forth herein may be enforced by the Building Inspector or any official performing similar functions for the City, and such Building Inspector is hereby authorized to refuse to revoke all permits for the construction of any improvements on any lot if the proposed improvements on such lot do not strictly comply with such restrictions, conditions and covenants.

(b) Notwithstanding anything contained herein to the contrary, all consents, approvals and actions reserved to or permitted to be taken or made by the Association may be taken, made or provided by the lot owners only if (i) the Association has not been created or is no longer in existence as of such date, or (ii) if the Association has been created and is in existence as of such date and the Association elects not to exercise such rights, easements and authority. In such event, the lot owners may take such action by the requisite vote of such lot owners as provided herein.

**Section 10.8 Other Authorities.** If other authorities, such as the City or County, impose more demanding, extensive or restrictive requirements than those set forth herein, the requirements of such authorities shall govern. Other authorities' imposition of lesser requirements than those set forth herein shall not supersede or diminish the requirements herein.

**Section 10.9 Addresses.** Any notices or correspondence to an owner of a lot shall be addressed to the street address of the lot. Any notices or correspondence to the Developer or Committee (if formed) shall initially be addressed to the Developer or Committee, whichever applies, at the addresses of the Developer, or to such other addresses as are specified by the Developer or Committee, whichever applies, pursuant to an instrument recorded in the deed records of the County.

**Section 10.10 Joinder By Others.** In addition to Declarant, the undersigned have either purchased, contracted to purchase, or have loaned money secured by a lien on lots in Mesa Oaks, Unit 1 and by their execution hereof have and do hereby join in, ratify and consent to the foregoing Declaration of Covenants, Conditions and Restrictions.

EXECUTED by the Declarants on the date shown in the acknowledgments below, to be effective as of this \_ 14<sup>th</sup> day of \_April, 2006.

DECLARANT:

Burkett Live Oak, Ltd.

By: JWD Management Corporation, General Partner

By:  Larry L. Aiken, President



Joinder:

Wilshire Homes, LP  
By: Wilshire GP, LLC

RBC Centura Bank  
A North Carolina banking corporation  
Managing Agent

By: [Signature]  
James Edward Home, Manager

By: \_\_\_\_\_  
Vice President

MHI Partnership, Ltd.

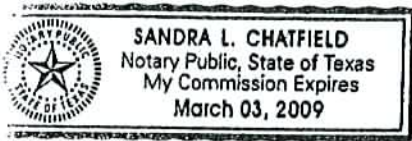
Bank of America

By: \_\_\_\_\_  
Michael K. Love, President

By: \_\_\_\_\_  
Vice President

STATE OF TEXAS §  
COUNTY OF TRAVIS §

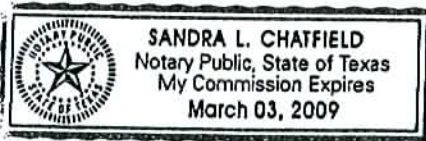
This instrument was acknowledged before me this 5<sup>th</sup> day of May, 2006, by Larry L. Aiken, President of JWD Management Corporation, General Partner of Burkett Live Oak, Ltd., on behalf of said entity.



[Signature]  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 4<sup>th</sup> day of May, 2006, by James Edward Home, Manager of Wilshire GP, LLC, General Partner of Wilshire Homes, LP, on behalf of said entity.



[Signature]  
Notary Public in and for the State of Texas  
My Commission Expires:

Joinder:

Wilshire Homes, LP  
By: Wilshire GP, LLC


RBC Centura Bank  
A North Carolina banking corporation  
Managing Agent

By: \_\_\_\_\_  
James Edward Horne, Manager

By: \_\_\_\_\_  
Vice President

MHI Partnership, Ltd.

Bank of America

By:   
Michael K. Love, President

By:   
Vice President JESSICA N. CAHY

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by  
Larry L. Aiken, President of JWD Management Corporation, General Partner of Burkett Live Oak, Ltd., on  
behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

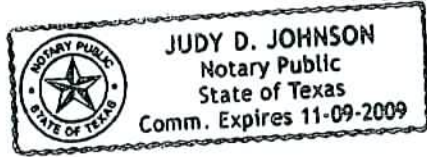
STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by  
James Edward Horne, Manager of Wilshire GP, LLC, General Partner of Wilshire Homes, LP, on behalf of  
said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

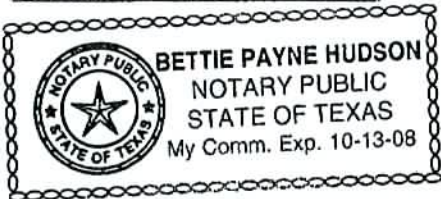
This instrument was acknowledged before me this 10<sup>th</sup> day of May, 2006, by Michael K. Love, President of MHI Partnership, Ltd., on behalf of said entity.



Judy D. Johnson  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 10<sup>th</sup> day of MAY, 2006, by Jessica Chu, Vice President of Bank of America, on behalf of said entity.



Bettie Payne Hudson  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, Vice President of RBC Centura Bank, on behalf of said entity.

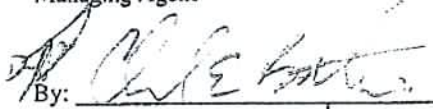
\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

Joinder:

Wilshire Homes, LP  
By: Wilshire GP, LLC

RBC Centura Bank  
A North Carolina banking corporation  
Managing Agent

By: \_\_\_\_\_  
James Edward Horne, Manager

By:   
Edward E. Bottrill  
Vice President

MHI Partnership, Ltd.

Bank of America

By: \_\_\_\_\_  
Michael K. Love, President

By: \_\_\_\_\_  
Vice President

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Larry L. Aiken, President of JWD Management Corporation, General Partner of Burkett Live Oak, Ltd., on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by James Edward Horne, Manager of Wilshire GP, LLC, General Partner of Wilshire Homes, LP, on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Michael K. Love, President of MHI Partnership, Ltd., on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF TRAVIS §

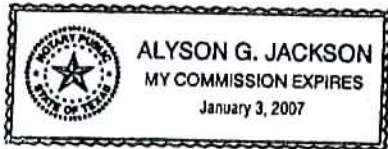
This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by \_\_\_\_\_, Vice President of Bank of America, on behalf of said entity.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
My Commission Expires:

STATE OF TEXAS §  
COUNTY OF ~~TRAVIS~~ HARRIS §

This instrument was acknowledged before me this 5<sup>th</sup> day of May, 2006, by Chad E. Botkin, Vice President of RBC Centura Bank, on behalf of said entity.

Alyson G. Jackson  
Notary Public in and for the State of Texas  
My Commission Expires: 01/03/07



**EXHIBIT "A"**  
**MASTER PLAN**



EXHIBIT "B"  
Metes & Bounds Description  
of  
14.51 Acre Tract



