

DECLARATION
OF
COVENANTS CONDITIONS AND RESTRICTIONS
FOR
SIENA COURT GARDEN HOMES

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DECLARATION OF
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FOR
SIENA COURT GARDEN HOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SIENA COURT GARDEN HOMES (the "Declaration"), is made as of this _____ day of _____, 20____, by SIENA COURT DEVELOPMENT, LLC., a Texas limited liability company (the "Declarant").

ARTICLE 1
GENERAL

1.1 Community Area. Declarant is the owner of that certain parcel of land in the County of Kendall, State of Texas, more particularly described on Exhibit A attached hereto and incorporated herein by reference, which is defined in this Declaration as the "Community Area." Declarant intends to develop the Community Area, including any property which may be annexed to the Community Area as provided herein, as a planned community of single family detached homes.

1.2 Purposes of Declaration. Property that is subject to this Declaration in the manner hereinafter provided shall be referred to as the "Community Area." This Declaration is executed: (a) in furtherance of a common and general plan for the Community Area; (b) to protect and enhance the quality, value, aesthetic, desirability, and attractiveness of the Community Area; (c) to provide for an Association as a vehicle to hold, maintain, care for, and manage Association Properties and/or amenities, including landscaped areas, private open space areas, private roads, fences, public access trails, and project signage to benefit all Owners; (d) to provide for the maintenance of the drainage easements and related improvements; (e) to define the duties, powers, and rights of the Association; and (f) to define certain duties, powers, and rights of Owners of Sites within the Community Area.

1.3 Declaration. Declarant, for itself, its successors and assigns, hereby declares that the entire Community Area and all other property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall, from the date the same becomes subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered, and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, and protection of the Community Area. The provisions of this Declaration are intended to and shall run with the land and, until their

expiration in accordance with the terms hereof, shall bind, be a charge upon, and inure to the mutual benefit of: (a) all of the property which is now or becomes part of the Community Area and each part or parcel thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, and (d) all Persons having or acquiring any right, title or interest in any property which becomes part of the Community Area or any part or parcel thereof or any Improvement thereon and their heirs, personal representatives, successors and assigns. The provisions of this Declaration shall be binding on each Owner and the family members, guests, invitees, and tenants of each Owner. An Owner shall be responsible for any non-compliance with this Declaration by such Owner's family members, guests, invitees, and tenants.

ARTICLE 2 **DEFINITIONS**

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

2.1 Code. "Code" shall mean the Texas property code as provided in Title 11, Chapters 201-215, as the same may be from time to time amended.

2.2 Administrative Functions. "Administrative Functions" shall mean all functions as are necessary and proper under this Declaration and shall include, without limitation, providing management and administration of the Association; providing architectural or design review services under Article 4 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Association Properties; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other such reasonable and ordinary administration tasks associated with operating the Association, including the engagement of professional management consultants.

2.3 Articles of Incorporation. "Articles of Incorporation" shall mean the Articles of Incorporation of SIENA COURT GARDEN HOMES Homeowners Association, which have been or will be filed in the office of the Secretary of State of the State of Texas, as the same may be amended from time to time.

2.4 Assessment. "Assessment" shall mean a Common Assessment, Special Assessment, or a Reimbursement Assessment.

2.5 Association. "Association" shall mean SIENA COURT GARDEN HOMES Homeowners Association, a Texas non-profit corporation, its successors and assigns.

2.6 Association Properties. "Association Properties" shall mean all the real property described in Exhibit B and all other real and personal property, if any, including improvements

located on Association Properties and all Common Areas, now or hereafter owned by the Association or with respect to which the Association holds an easement for the use, care, or maintenance thereof, or for which the Association has a right or obligation to maintain, held for the common use and enjoyment of its Members as provided herein, and for other purposes as may be permitted by this Declaration.

2.7 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

2.8 Budget. "Budget" shall mean a written itemized estimate of the annual revenues and expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Section 9.5 of this Declaration.

2.9 By-Laws. "By-Laws" shall mean the By-Laws of the Association, which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

2.10 Common Area. "Common Area" shall mean any portions of the Community Area: designated as Common Area on Exhibit B and the improvements located thereon; identified as a tract, improvement or amenity to be maintained by the Association on a plat or instrument Recorded by Declarant for any part of the Community Area, including, but not limited to, the private access drive, trail easements, and utility/drainage easement as shown on the Plat, identified in this Declaration as areas to be maintained by the Association, or conveyed to the Association by the Declarant, which are owned or maintained by the Association for the common use and enjoyment of the Owners, including, but not limited to, private roads, streets, and sewers; the Drainage System; visitor parking areas; landscaped areas within the Community Area not located on a Site for a single family home; perimeter fences and fences on Sites, if any, and Common Areas; signs and entryway landscaping and features for the Community Area; and easements for the use and benefit of the Owners as may be provided in this Declaration, including all easements described in Exhibit D to this Declaration. Such Common Area may be owned: (a) by the Association; (b) by individual Owners over which the Association may have an easement for maintenance purposes; or (c) by the City.

2.11 Common Assessment. "Common Assessment" shall mean the annual assessments made for the purpose of covering the portion of the annual costs of operating the Association, maintaining, repairing, and replacing Common Areas, and reasonable replacement reserves for Common Areas, including expenses incurred in connection with any authorized function of the Association, which are to be paid by each Owner to the Association for purposes provided herein and charged to such Owner and to the Site of such Owner.

2.12 Community Area. "Community Area" shall mean the real property which is subject to this Declaration.

2.13 County and City. "County" shall mean the County of Kendall, State of Texas. "City" shall mean The City of Boerne, State of Texas.

2.14 Declarant. "Declarant" shall mean Siena Court Development, LLC, a Texas limited liability company, its successors and assigns. A Person shall be deemed to be a "successor and assign" of Siena Court Development, LLC, as Declarant, only if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assigns of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument. However, a successor to Siena Court Development, LLC by consolidation or merger shall automatically be deemed a successor or assign of Siena Court Development, LLC as Declarant under this Declaration.

2.15 Declaration. "Declaration" shall mean this instrument as it may be amended from time to time.

2.16 Deed of Trust. "Deed of Trust" shall mean a Mortgage.

2.17 Design Review Committee. "Design Review Committee" shall mean the Committee provided for in Article 4 of this Declaration.

2.18 Drainage System. "Drainage System" shall mean the drainage facilities and associated appurtenances as described on the Drainage Plan for SIENA COURT GARDEN HOMES approved by and on file with the City.

2.19 Improvement. "Improvement" shall mean all structures and any appurtenances thereto and equipment of every type or kind, including, but not limited to, buildings, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, walkways, outdoor sculptures or artwork, sprinkler pipes, above ground and underground utilities, mailboxes, garages, flagpoles, roads, driveways, sidewalks, private drives, dog or pet houses, exterior lighting, spas, hot tubs, parking areas, fences, screening walls, retaining walls, stairs, decks, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior tanks, solar equipment, antennae, satellite dishes, exterior air conditioning compressors, and ventilation equipment.

2.20 Improvement to Property. "Improvement to Property" shall mean any improvement, change, alteration, or addition to any property within the Community Area. "Improvement to Property" is more particularly defined in Section 4.2 of its Declaration.

2.21 Leases. "Lease" shall mean and refer to any agreement for the leasing or rental of a Site.

2.22 Maintenance Funds. "Maintenance Funds" shall mean the accounts into which the Board shall deposit monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association pursuant to Article 8 hereof.

2.23 Member. "Member" shall mean the Person or, if more than one, all Persons collectively who constitute the Owner of a Site.

2.24 Mortgage. "Mortgage" shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Site, encumbering the Site to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage." "First Mortgage" shall mean a Mortgage which has priority over all other security interests in a Site, other than statutory liens for taxes and special assessments.

2.25 Mortgagee. "Mortgagee" shall mean a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee. "First Mortgagee" shall mean any Person named as the mortgagee or beneficiary under any First Mortgage, or any insurer or guarantor of a First Mortgage.

2.26 Mortgagor. "Mortgagor" shall mean the Person who mortgages his or its property to another (is the maker or grantor of a Mortgage). The term "Mortgagor" shall include a trustor or grantor under a Deed of Trust.

2.27 Notice of Completion. "Notice of Completion" shall mean written notice to the Design Review Committee of the completion of any Improvement to Property pursuant to Article 4 of this Declaration.

2.28 Owner. "Owner" shall mean the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Site. .

2.29 Person. "Person" shall mean a natural person, a corporation, a partnership, or any other entity.

2.30 Planned Community. "Planned Community" shall have the same meaning as set forth in the Act.

2.31 Plat. "Plat" shall mean SIENA COURT GARDEN HOMES. 5.481 acre tract of land lying in the J. Small Survey No. 183, Abstract 441, Kendall County, Texas, said 5.481 acre tract being a portion of Lot 3 and all of Lot 4 of the Fair View Addition, a subdivision recorded in Vol. 37, page 172, deed records of Kendall County, Texas, also being all of that tract of land described as 5.48 acres of land as recorded in Vol. 653, page 355, official records of Kendall County, Texas.

2.32 Record or Recorded. "Record" or "Recorded" shall mean the filing for record of any document in the office of the Clerk and Recorder of the County of Kendall, Texas.

2.33 Reimbursement Assessment. "Reimbursement Assessment" shall mean a charge against a particular Owner and his Site for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation, directly attributable to the Owner, of the Declaration or the Rules and Regulations, pursuant to Section 9.10 hereof, together with late charges and interest as provided for herein.

2.34 Related User. "Related User" shall mean each Person claiming a right to use a Site by, through, or under an Owner, including, but not limited to, any family member, guest, tenant, contractor, or other invitee of an Owner.

2.35 Rules and Regulations. "Rules and Regulations" shall mean rules and regulations adopted by the Board of Directors as provided in Section 8.16 of this Declaration.

2.36 Site. "Site" shall mean any lot or parcel of land within the Community Area which is shown upon any Recorded Plat or any other parcel of land which may be sold or conveyed without violation of the provisions of Texas law pertaining to the subdivision of land. "Site" shall not include: (a) any property owned by a public body, (b) the Association Properties, or (c) any Common Area as defined herein.

2.37 Special Assessment. "Special Assessment" shall mean a charge against each Owner and his Site representing a portion of the costs of the Association for the purpose of funding major capital repairs, maintenance, replacements, reserves for future replacements, and Improvements which are not paid for out of Common Assessments for any reason, pursuant to Section 9.9 hereof.

ARTICLE 3

GENERAL RESTRICTIONS APPLICABLE TO COMMUNITY AREA

All real property within the Community Area shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to exemptions of Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonably or unduly harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Design Review Committee.

3.1 Landscaping of Community Area. It is the intent of the Declarant and the Design Review Committee that all landscaping within the Common Area will be installed by the Declarant and will be maintained by the Association as part of Declarant's landscape plan. Owners

may not install any landscaping unless landscape plans or drawings showing the design and location of plants and landscape materials are first submitted to and approved by the Design Review Committee. No changes to landscaping that are inconsistent with the landscape and plantings elements required under the Plat and the landscape plan approved by and on file with the City may be made without the prior approval of the Design Review Committee. No changes or additions to landscaping installed by Declarant may be made by an Owner unless approved by the Design Review Community and also shall be approved by Declarant, as long as Declarant owns a Site within the Community Area or any Parcel that may be annexed to the Community Area. All landscaping shall comply with the requirements of any landscape and planting plans included in the landscape plan approved by and on file with the County. Landscape materials located within five (5) feet of back of curb shall not exceed twenty-four (24) inches in height and trees and other landscape materials shall not cause sight distance problems with vehicles entering the adjoining street from driveways or nearby intersections. Any dispute that may arise over sight distances shall be resolved by utilizing the City's sight distance table in effect at the time of the dispute.

3.2 Maintenance of Community Area. No property within the Community Area shall be permitted to fall into disrepair, and all property within the Community Area, including any fences, Improvements, and landscaping thereon, shall be kept and maintained in a clean, attractive, and sightly condition and in good repair. Maintenance, repair, and upkeep of Improvements on each Site shall be the responsibility of the Owner of the Site, except for fences installed by the Declarant, the area within trail easements, and any other Improvements that are to be maintained by the Association. The Association shall be responsible for the maintenance, repair, and upkeep of Association Properties, all Common Areas, fences installed by Declarant or the Association (whether on a Site or Association Properties), the area within trail easements and all improvements located thereon, and the Drainage System. Dead or dying landscape materials shall be replaced as soon as possible, taking into account weather conditions affecting the planting of replacement landscaping, and all landscaping shall be regularly maintained in a neat and trim manner. Only the Association is permitted to make any changes in Improvements located on Association Properties or Common Areas and landscaping installed by Declarant erected on Sites or Association Properties. Automatic irrigation systems shall be maintained and operated in such a fashion as to conserve water to the maximum extent practicable while still maintaining landscaping in an attractive condition.

The Association is hereby granted an easement across all Sites for the purpose of maintaining, repairing, and replacing any and all fences, the maintenance of which is the responsibility of the Association, the Drainage System, the area within trail easements, landscaping installed by Declarant outside the privacy fence on each Site and other landscaping that is the responsibility of the Association to maintain, and any other Improvements and Common Areas, the maintenance of which is the responsibility of the Association.

Violation of this Section 3.2 by an Owner shall permit the Association to enter on the Site of the Owner and cure the violation or cause compliance with this provision and to levy and collect a Reimbursement Assessment for the costs and expenses of the Association in so doing; provided, however, that there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

3.3 Fences Within Community Area. Except for fences which may be installed by Declarant, no fences shall be constructed on any Site without the prior written approval of the Design Review Committee. No fences may be installed in any Common Area unless installed by the Declarant or the Association.

Each fence installed by Declarant located on Association Properties or Sites shall be maintained by the Association. Each Owner of a Site shall be responsible for maintaining, repairing, and replacing, in a reasonably attractive manner, any fence installed by such Owner with the approval of the Design Review Committee. Any fence located on a lot line between two Sites which was installed by one of the Owners shall be maintained by the Owner who installed the fence. Owners are hereby granted an easement across adjacent Sites for the purpose of maintaining, repairing, and replacing any fence installed by such Owner.

3.4 Property Uses. All Sites shall be used for residential purposes and such other purposes as may be permitted under the applicable regulations of the City. No dwelling erected or maintained within Community Area shall be used or occupied for any purpose other than for a single-family detached dwelling. Notwithstanding the foregoing, business activities associated with the sale of Sites or residences constructed thereon shall be allowed, including construction trailers, sales offices, and model homes used by Declarant, subject to all the requirements of the City. In addition, in-home businesses not involving the servicing of customers or use of employees in the residence, other than the Owners of the Site on which such activities occur or their family members, shall be allowed if permitted under applicable zoning and other City regulations and requirements, provided such activities are conducted solely within the residence and do not create or result in any offensive or noxious activities, do not constitute a nuisance, and do not result in customers, employees or clients coming to the residence for purposes related to the business or parking in public or private streets. Any other use of a Site for in-home businesses shall be prohibited unless approved by the Board of Directors of the Association, which approval may be approved, approved with conditions, or disapproved in the sole discretion of the Board of Directors.

3.5 Construction Type: Building Height. All construction shall be new. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Site, except as expressly hereinafter provided for temporary buildings. The height of all buildings constructed within the Community Area shall be

limited to the height limits required or approved by the City. No basements may be constructed within the Community Area.

3.6 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any property within the Community Area, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others.

3.7 Annoying Sounds or Odors. No sound or odor shall be emitted from any property within the Community Area which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, wind chimes, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior approval of the Design Review Committee. All materials located upon a Site that create or cause a noxious or offensive odor shall be removed immediately by the Owner of the Site. The Board of Directors of the Association may require the Owner of a residence or motor vehicle with a security system which experiences false alarms more than three (3) times in any thirty (30) day period or more than six (6) times in any twelve month period to repair, replace, or deactivate such alarm system. All alarm systems shall conform to applicable governmental requirements.

Notwithstanding the foregoing, special gatherings of residents within the community and their invited guests (family parties, block parties, community garage sales, and similar activities) which may utilize outdoor speakers may be permitted, provided that the event has first been approved by the Association Board of Directors and is permitted by the City's Code Enforcement office or similar office. Any approval by the Board of the Association may impose conditions on the noise level, location, hours, number of participants, and other matters in connection with any approval of the gathering.

3.8 No Hazardous Activities. No activity shall be conducted on and no improvement shall be constructed on any property within the Community Area which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property within the Community Area and no open fires shall be lighted or permitted on any property within the Community Area except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers. No exploding fireworks shall be discharged within the Community Area.

3.9 No Unsightliness. All unsightly conditions, structures, facilities, equipment, and objects shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment except when in actual use. The Board may specify what conditions and objects constitute "unsightliness" by Rules and Regulations duly adopted by the Board. The foregoing shall not apply to Declarant during construction activities.

3.10 Weeds. The grass and other landscaped areas in all yards and other portions of every Site on which no building has been constructed shall be maintained in an attractive condition. In addition, each Site shall be kept free from brush or other growth or trash which, in the reasonable opinion of the Design Review Committee, is unsightly or causes undue danger of fire.

3.11 Restrictions on Garbage and Trash. No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Site except within an enclosed structure or appropriately screened from view, except that any container containing such materials may be placed outside at such times as may be necessary to permit garbage or trash pick-up. All trash containers shall have a cover that is resistant to animals that may be attracted to trash. The Board of the Association may prescribe the types of permitted trash containers by rules which shall be followed by all Owners after adoption. The Board may, in its sole discretion, contract with one or more trash disposal contractors to provide regular and consistent refuse management for all Owners within the Community Area and include the costs of such services in the Common Assessments.

3.12 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Site, except that domesticated birds or fish and other small domestic animals permanently confined indoors (not including pot-bellied pigs and other animals capable of being domesticated that are excluded pursuant to rules and regulations adopted by the Board of the Association), and except an aggregate of not more than two domesticated dogs (which must be restrained in the backyard or side yard of a Site or other enclosure area approved by the Design Review Committee or kept inside the residence at all times within a Site) and two domesticated cats (not including tamed wildlife), will be permitted on any Site within the Community Area unless approved by the Board of the Association. A number of dogs and/or cats may be permitted by the Board of the Association. The Board of the Association may withhold its approval in its sole, subjective discretion and may condition such approval on conditions applicable to the care and maintenance of pets approved by the Board and on physical improvements to the Site of the applicant which are approved by the Design Review Committee. Pet restraints may include an invisible fence on or within the perimeter boundary of a Site or other type of enclosure approved by the Design Review Committee. Any permitted pets may not be kept, bred, or maintained for any commercial purpose. Animals may not be tethered or allowed to run in the front yard or side yards of a Site. No animal of any kind shall be permitted which, in the opinion of the Board of Directors, makes an unreasonable amount of noise or odor, chases or otherwise attacks people or other pets within the Community Area or adjacent public or private properties or is a nuisance. The Board of Directors may require an Owner or their tenant to reduce the number of pets kept on a Site based on the problems described in the preceding sentence, whether or not the Board of Directors had approved keeping more than two dogs and/or cats on the Site and even if the number of animals complies with the requirements of this Section. The Board of Directors may adopt

rules prescribing the number of complaints about a pet received by the Association over a specified period of time that would constitute a violation of this Section. All household pets (except domesticated cats) shall be controlled by their Owner and shall not be allowed off the Owner's Site except when properly leashed and accompanied by the pet Owner or his representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet to any Association Properties, to Sites owned by any other Persons, injuries to any Persons, or otherwise. The Owner of a pet causing any damage shall defend, indemnify, and hold harmless the Association, the members of the Board of Directors and the Design Review Committee, and their agents and representatives of the Association from and against all claims and damages related to any such damage. Animal waste shall be cleaned up regularly and damaged landscaping shall be replaced as soon as the landscaping is visually unattractive, dead or dying. Within the Community Area, animal waste deposited by an Owner's pet shall be immediately removed by such Owner.

3.13 No Temporary Structures. No tent, shack, storage shed, temporary structure, or temporary building other than those placed within the Community Area or on a site by Declarant (which may or may not be new) in connection with the sale of Sites or construction and sale of Improvements on Sites shall be placed upon any property within the Community Area except with the prior written consent of the Design Review Committee obtained in each instance, subject to such conditions or restrictions as may be required by the Design Review Committee.

3.14 Restriction on Antennae, Pipes, Utility Lines, and Transmitters. Pipes for water, gas, sewer, drainage, or other purposes, wires, poles, and other facilities for the transmission of electricity, and utility meters or other utility facilities shall be kept and maintained, to the extent possible, underground or within an enclosed structure. Any satellite dish, aerial, pole, antenna or other facility for the transmission or reception of audio or visual signals (except those located entirely inside a residence) shall be screened from view from streets and adjacent Sites and shall first be approved by the Design Review Committee. Satellite dishes which are one meter or less in diameter may be placed on the side of a residential structure abutting the back yard or side yard of a Site, or at another location if a clear signal cannot be obtained at such location, with approval from the Design Review Committee. The Design Review Committee shall act on applications for approval of satellite dishes and antennae in accordance with the requirements of the Federal Telecommunications Act of 1996, and any applicable regulations adopted pursuant thereto, as such statute and regulations may be amended from time to time. With the approval of the Design Review Committee, a master antenna or cable television antenna may, but need not, be provided for use of all Owners or a group of Owners, and Declarant may grant easements for such purposes. Antennae for shortwave or HAM radio operation are prohibited its can be demonstrated that said antennae can be screened from view similar to a television satellite dish or similar equipment or unless the Association is prohibited from excluding such antennae from the Community Area under applicable federal or state law.

3.15 Restrictions on Signs and Advertising. No sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within the Community Area so as to be evident to public view, except signs as may be approved in writing by the Design Review Committee or which are permitted herein. Political signs and a sign advertising a Site for sale or for lease may be placed on such Site; provided, however, that standards relating to dimensions, color, style, and location of such signs shall be subject to the sign code requirements of the City. The provisions of this Section shall not apply to Declarant with respect to advertising in connection with the construction and/or sale of residences located within the Community Area.

3.16 Maintenance of Drainage. The Association shall be responsible for maintaining the Drainage System located within the Community Area - The Drainage System may not be modified without the consent of the Design Review Committee and the City. Each Owner shall be responsible for maintenance of the established drainage pattern on his Site in accordance with the applicable grading plan approved by and on file with the City. There shall be no interference with the established drainage pattern over any property within the Community Area, except as approved in writing by the Design Review Committee and the City. Approval shall not be granted unless provision is made for adequate alternate drainage. The Owner of the Site for which the established drainage pattern is changed shall be solely liable for the impact of such changes on adjacent Sites, Association Properties, adjacent properties outside the Community Area, or public property. The "established drainage pattern" shall mean the drainage pattern which exists at the time the approved grading of any property is completed and shall include any established drainage pattern shown on any plans approved by the Design Review Committee. The established drainage pattern may include the drainage pattern: (a) from Association Properties over any Site; (b) from any Site over the Association Properties; (c) from any property owned by the City or other Persons over any Site; (d) from any Site over property owned by the City or other Persons; (e) from any Site over another Site; or (f) from any Site over properties outside the Community Area. The Association is hereby granted an easement across all Sites for the purpose of maintaining drainage ditches and improvements that cross or are adjacent to a Site and to correct the drainage pattern and grading of a Site if necessary to improve or correct overall drainage of the Community Area.

3.17 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on property within the Community Area which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

3.18 Compliance with Laws. Nothing shall be done or kept on any property within the Community Area in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction (collectively, "**Applicable Law**").

3.19 Further Subdivision of Sites. The Owner of a Site shall not further subdivide that Site to smaller sites.

3.20 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Site, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced in a timely manner to its original condition or such other condition as may be approved in writing by the Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be demolished and the Site to be suitably landscaped, subject to the approval of the Design Review Committee, so as to present a pleasing and attractive appearance.

3.21 Temporary Storage of Building Materials. No building materials shall be stored on any Site except temporarily during continuous construction of an Improvement on the same Site or inside a residence. Building materials shall be removed from a Site or other portion of the Community Area within thirty (30) days after cessation of actual construction in those areas being served by such material storage area.

3.22 Playground Equipment. Playground equipment such as basketball backboards and poles, playhouses, swing sets and the like may not be erected on any Site within the Community Area without the prior written consent of the Design Review Committee, subject to the requirements of this Section and any design guidelines adopted by the Design Review Committee. Any such playground equipment may not be located on a property line and shall be located so as to minimize any disturbance of residents on other Sites. No basketball backboards may be attached to a structure. Free-standing basketball backboards shall be made of standard manufacturers materials and colors.

3.23 Vehicle Repairs. No maintenance (other than washing and polishing vehicles), servicing, repair, dismantling, or repainting of any type of vehicle, boat, trailer, machine, or device may be carried on within the Community Area, except within a completely enclosed structure which screens the sight and sound of the activity from the street and from other Sites, Association Properties, and public property.

3.24 Storage of Gasoline and Explosives. Etc. No Site shall be used for storage of explosives, gasoline, or other volatile and/or incendiary materials or devices. Gasoline or fuel for Owner's lawn mower, and the like may be maintained on an incidental basis on the Site in an amount not to exceed five (5) gallons and shall be kept in approved containers. The provisions of this Section shall not apply to the Declarant or to builders with approval granted by the Declarant with respect to fuel which may be necessary in connection with the construction and/or sale of residences located within the Community Area.

3.25 Parking Restrictions. No motor vehicles, boats, campers, trailers, motorcycles, motor homes, or other vehicles may be parked on the private access drive or other Association Properties except as permitted by the Association in the designated parking spaces on Association Properties. No boat, camper (on or off supporting vehicles), trailer, tractor, truck (other than a $\frac{3}{4}$ ton or smaller pick-up truck not used for commercial purposes), towed trailer unit, motorcycle,

snowmobiles, disabled, junk, or abandoned vehicles, motor home, mobile home, camper, recreational vehicle, or any other vehicle, the primary purpose of which is recreational, sporting, or commercial use, shall be parked or stored in, on, or about any Site of street within the Community Area. Any vehicle that has external lettering or signage that gives the appearance of being a vehicle used in connection with a commercial enterprise or business shall be deemed to be a vehicle the primary purpose of which is commercial use. The Association shall have the right to enter Owner's Site to remove and store, at Owner's expense, vehicles in violation of this Section. Owner shall be entitled to not less than fifteen (15) days' notice prior to such action by the Association. Parking of motor vehicles on public and private streets or driveways within the Community Area shall be prohibited, unless permitted by the Association pursuant to duly-adopted Rules and Regulations which shall be consistent with the regulations of the foregoing restrictions shall not apply to the temporary, daytime parking of commercial vehicles while providing service at a residence within the Community Area.

Notwithstanding the foregoing, the Association shall allow Owners to park emergency vehicles in their Parking Unit, provided that: (i) it is a condition of such Owner's employment that the vehicle is required to be available at designated periods at the Owner's residence; (ii) such vehicle has a weight rating of 10,000 lbs. or less; (iii) the Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider; (iv) the vehicle has an official designation on it; and (v) the vehicle does not interfere with access by other Owners.

3.26 Air Conditioning and Heating Equipment. Except for those installed by Declarant, no heating, air conditioning, solar collectors, evaporative coolers, or refrigeration equipment shall be placed, allowed, or maintained anywhere on a Site or structure other than within a structure or on the ground in an area which shall be screened from public view, or, with respect to solar collectors, which are flush with the roof surface, in accordance with plans approved by the Design Review Committee.

3.27 Construction Activities. Normal construction activities carried out by the Declarant within the Community Area or carried out by an Owner or Owner's contractor in connection with Improvements to Property approved by the Design Review Committee shall not be deemed a violation of any of the provisions of this Article 3. All contractors (including Declarant) engaged in construction activities within the Community Area shall ensure that all construction activities comply with applicable requirements of the County and OSHA, that construction debris is removed from the Community Area on a regular basis, that streets are cleaned of mud, dirt, and debris caused by such contractor or its subcontractors, and that any damage to streets, curbs, sidewalks, utilities, and any other Improvements within the Community Area caused by such contractor or any of its subcontractors is repaired in a timely manner.

3.28 Leases. All leases of Improvements located on any Site within the Community Area shall be subject in all respects to the provisions of this Declaration. No lease may be executed

for a term of less than one (1) year, unless the Board of Directors approves a shorter lease term prior to execution of the lease. Any lease shall include the entire residence and Site.

3.29 Clotheslines. No outdoor clotheslines may be placed on any Site unless a retractable clothesline is used in lieu of a non-retractable clothesline.

3.30 Driving Laws. Pursuant to Section 542.008 of the Transportation Code, all traffic rules and regulations enforced and applied by the City on all public streets, alleys and rights-of-way governing the operation and movement of vehicles are extended to all private streets, alleys and rights-of-way within the Subdivision. All such streets, roads, alleys, and rights-of-way are governed and controlled by all traffic laws set forth in state law and City ordinance

ARTICLE 4

ARCHITECTURAL APPROVAL

4.1 Approval of Improvements Required. The approval of the Design Review Committee shall be required for any Improvement to Property on any Site, except (a) for any Improvement to Property made by Declarant, and (b) where prior approval of an Improvement to Property may be waived or certain Improvements to Property may be exempted in writing or under written guidelines, rules, or design standards promulgated by the Design Review Committee. The Design Review Committee may delegate some or all of its authority under this Declaration to such subcommittee or subcommittees as the Design Review Committee may elect to establish from time to time or, with approval of the Boards of Directors of the Association. Membership on any subcommittee need not include members of the Design Review Committee.

4.2 Improvement to Property Defined. "improvement to Property" requiring approval of the Design Review Committee shall mean and include, without limitation: (a) the construction, installation, erection, or expansion of any building, structure, or other improvement, including utility facilities and fences; (b) the demolition or destruction, by voluntary action, of any building, structure, or other Improvement; (c) the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern; (d) installation of landscaping on a Site; (e) changing the access point and sidewalk location for any Site; and (f) any change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture.

4.3 Membership of Committee. The Design Review Committee shall consist of two (2) members, all of whom shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint and replace all two (2) members during the Appointment Period (as hereinafter defined). The Board of Directors of the Association shall have the right to appoint such members after the expiration of the Appointment Period. During the period of development

of the Community Area while Declarant has rights to appoint members of the Design Review Committee, Declarant shall give the Association written notice of the appointment or removal of any member of the Design Review Committee. The "Appointment Period" shall mean the period of time commencing as of the date of Recordation of this Declaration and continuing until the earliest to occur of the following events: (a) when all Sites have been conveyed to Persons other than a successor Declarant, and certificates of occupancy have been issued for the residences constructed thereon, or (b) when, in its discretion, Declarant voluntarily relinquishes such right. After termination of the Appointment Period, members of the Design Review Committee shall be Members of the Association. After expiration of the Appointment Period, members of the Design Review Committee to be appointed by the Association shall be appointed by the Board of Directors. Members of the Design Review Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period, the Association may at any time and from time to time change the authorized number of members of the Design Review Committee, but the number of members of the Design Review Committee shall not be less than two (2).

4.4 Address of Design Review Committee. The address of the Design Review Committee shall be at the principal office of the Association.

4.5 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Design Review Committee at its offices such descriptions, sketches, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications, and samples of materials and colors as the Design Review Committee shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Design Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed improvement to Property. Until receipt by the Design Review Committee of all required materials in connection with the proposed Improvement to Property, the Design Review Committee may postpone review of any materials submitted for approval. The provisions of this Article 4 shall not apply to the Declarant, except as where Declarant is specifically referred to in this Article 4.

4.6 Criteria for Approval. The Design Review Committee shall approve any proposed Improvement to Property only if it deems in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Community Area as a whole; that the appearance, exterior design, materials and colors of the proposed Improvement to Property will be in harmony with the surrounding areas of the Community Area; that the Improvement to Property will not detract from the beauty, wholesomeness, and attractiveness of the Community Area or the enjoyment thereof

by Owners; that the proposed changes in topography, if any, properly relate to adjacent Sites and the Community Area as a whole; that the proposed Improvement to Property complies with all applicable public and private development restrictions, including all development restrictions set forth in this Declaration, any Design Standards adopted by the Design Review Committee and on a Preliminary and Final Plat or other development approval by the City; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association.

4.7 Design Standards: Waivers. The Design Review Committee will adopt “SIENA COURT GARDEN HOMES Design Guidelines” (referred to herein as the "Design Standards") relating to approval criteria, recommended materials and designs, submittal and approval procedures, materials to be submitted, fees, and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement to Property. The Design Standards, or the Design Review Committee on a case-by-case basis, may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part or variances granted because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances. The Design Standards, or the Design Review Committee on a case-by-case basis, may waive the requirement for approval of certain Improvements to Property or exempt certain Improvements to Property from the requirement for approval, if such approval is not reasonably required to carry out the purposes of this Declaration. The Design Review Committee may revise the Design Standards from time to time in a manner that is consistent with the provisions of this Declaration.

4.8 Design Review Fee and Compensation of Members. The Design Review Committee may, in the Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to Property. The Design Review Committee may provide that the amount of such fee shall be for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property or the anticipated costs to be incurred by the Design Review Committee in reviewing the application. Such fee may not exceed the amount set forth in the Design Standards, if any, as amended from time to time. Members of the Design Review Committee may not receive compensation for services rendered to the Committee.

4.9 Decision of Committee. Any decision of the Design Review Committee shall be made within the time period specified in the Design Standards, but in no event later than the time period set forth in Section 4.10 below. The Design Review Committee's decision shall be in writing. The decision of the Design Review Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Design Review Committee. The Design Review Committee shall maintain records of all submittals, approvals and disapprovals, and correspondence.

4.10 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, disapproval or a request for additional information or materials is transmitted to the Applicant by the Design Review Committee within forty-five (45) days after the date of actual receipt by the Design Review Committee of all required materials and expiration of the additional ten (10) day period described below. If additional information or materials are requested by the Design Review Committee, the forty-five (45) day time period within which the Design Review Committee is required to make its decision shall be automatically extended to forty-five (45) days after the Design Review Committee receives the requested information or materials. If an Applicant does not receive a response from the Design Review Committee forty-five (45) days after the Applicant sent the request to the Design Review Committee, the Applicant shall notify the Design Review Committee that a response was not received and the Design Review Committee shall have ten (10) days after actual receipt of such notification (and an additional copy of the request and supporting materials) to act on the request. If the Design Review Committee fails to act on the request within such ten (10) days, the request shall be deemed to have been approved.

4.11 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be commenced within twelve (12) months and accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Design Review Committee in connection with the proposed Improvement to Property, and any conditions imposed by the Design Review Committee. Failure to complete the proposed Improvement to Property within twelve (12) months after the date of approval or such other period or extension of the initial twelve (12) month period as specified in writing by the Design Review Committee, or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Design Review Committee, shall constitute non-compliance with the requirements for approval of the Improvement to Property. Failure to commence construction of the proposed Improvement to Property within twelve (12) months after the date of approval shall result in the automatic termination of such approval, unless the Design Review Committee grants an extension of such time period.

4.12 Notice of Completion. Upon completion of the Improvement to Property, the Applicant may give written Notice of Completion to the Design Review Committee. Until the date of receipt of such Notice of Completion, the Design Review Committee shall not be deemed to have notice of completion of such Improvement to Property.

4.13 Inspection of Work. The Design Review Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion, provided that the right of inspection shall terminate sixty (60) days after the Design Review Committee shall have received a Notice of Completion from Applicant.

4.14 Notice of Non-Compliance. If, as a result of inspections or otherwise, the Design Review Committee finds that any Improvement to Property has been done without obtaining the approval of the Design Review Committee or was not done in complete conformity with the description and materials furnished to, and any conditions imposed by, the Design Review Committee or was not completed within twelve (12) months after the date of approval by the Design Review Committee or such other period as may have been specified in writing by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of the noncompliance, which notice shall be given, in any event, within sixty (60) days after the Design Review Committee receives a Notice of Completion from the Applicant. The notice shall specify the particulars of the non-compliance and shall require the Applicant to take such action as may be necessary to remedy the non-compliance.

4.15 Failure of Committee to Act After Completion. Failure of the Design Review Committee to inspect the work shall not relieve the Applicant from its obligations to comply with this Declaration or all conditions of approval or prevent the Design Review Committee from pursuing all remedies available to it in the event of any non-compliance.

4.16 Correction of Non-Compliance. If the Design Review Committee determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Applicant of notice of noncompliance from the Design Review Committee. If the Applicant does not comply with the Committee ruling within such period, the Committee may, at its option, record a Notice of Non-Compliance against the real property on which the noncompliance exists, may enter upon such property and remove the noncomplying Improvement to Property, or may otherwise remedy the non-compliance, and the Applicant shall reimburse the Association, upon demand, for all expenses, including attorney's fees, incurred therewith. If such expenses are not promptly repaid by the Applicant or Owner to the Association, the Board may levy a Reimbursement Assessment against the Owner of the Site for such costs and expenses. The right of the Association to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or under this Declaration. The Applicant and Owner of the Site shall have no claim for damages or otherwise on account of the entry upon the property and removal of the non-complying Improvement to Property.

4.17 No Implied Waiver or Estoppel. No action or failure to act by the Design Review Committee, including the granting of a variance, shall constitute a waiver or estoppel with respect to future action by the Design Review Committee with respect to any Improvement to Property. Specifically, the approval of the Design Review Committee of any Improvement to Property or granting of a variance shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar improvement to Property on the same Site or any other Sites or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property on the same Site or any other Site.

4.18 Committee Power to Grant Variances. Subject to the limitations set forth in Section 4.7 above, the Design Review Committee may authorize variances from compliance with any of the provisions of this Declaration, when circumstances such as hardship, aesthetics, or environmental considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the Design Review Committee. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

4.19 Meetings of Committee: Delegation of Authority. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Design Review Committee may from time to time, by resolution in adopted by a majority of the members, designate a Committee Representative (who may, but need not be one of its members) to take any action or perform any duties for or on behalf of the Design Review Committee, except the granting of approval to any Improvement to Property and granting of variances. The action of such Committee Representative within the authority of such Committee Representative or the written consent or the vote of a majority of the members of the Design Review Committee shall constitute action of the Design Review Committee. The Design Review Committee also may, from time to time, by resolution adopted by a majority of the members, delegate some or all of the Design Review Committee's rights and responsibilities under this Declaration to a subcommittee which shall have the power and the obligation to exercise such delegated rights and responsibilities with respect to the part of the Community Area that is described in such resolution. Such resolution shall identify the members of such subcommittee, the mailing address for applications that are to be submitted to such subcommittee, state whether such subcommittee has been authorized to adopt additional or different Design Guidelines applicable to the portion of the Community Area within the subcommittee's jurisdiction, any other limitations on such subcommittee's authority, and the portion of the Community Area within which the subcommittee shall have the rights and responsibilities of the Design Review Committee. A copy of such resolution shall be mailed to all Owners of property the portion of the Community Area affected by such delegation. Any delegation may be modified or withdrawn by a subsequent written resolution adopted by a majority of the members of the Design Review Committee, but any such modification or withdrawal shall not affect any prior actions of the Committee Representative or subcommittee or the review and action on any applications then pending before the Committee Representative or subcommittee.

4.20 Records of Actions. The Design Review Committee shall keep a permanent record of all final actions taken by the Committee for a period of three (3) years after each final action.

4.21 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested Person and after confirming any necessary facts with the Design Review Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any Person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

4.22 Non-Liability for Committee Action. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee or any subcommittee appointed by the Design Review Committee, any Committee or subcommittee Representative, the Association, any member of the Board of Directors, or Declarant (or their respective owners, officers, directors, managers and employees) for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the Design Review Committee shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes, plat restrictions, or other governmental laws or regulations. Members of the Design Review Committee shall be indemnified by the Association to the same extent as the Board of Directors of the Association, as set forth in the Articles of Incorporation or By-Laws of the Association.

4.23 Construction Period Exception. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the provisions contained in this Declaration as to the property upon which the construction is taking place shall be deemed to have been suspended temporarily to the extent necessary to permit such construction, provided that, during the course of any such construction, nothing is done which will result in a violation of any of the provisions of this Declaration upon completion of construction and nothing is done which will constitute a nuisance or unreasonable interference with the use and enjoyment of other property.

ARTICLE 5 **ASSOCIATION PROPERTIES**

5.1 Member's Rights of Use and Enjoyment Generally. Unless otherwise provided in this Declaration, all Members may use and are hereby granted an easement of enjoyment in the Association Properties. Each Member, upon closing on the purchase of a Site, shall have and is hereby granted a non-exclusive perpetual access easement over, through, and across the private access drive as shown on the Plat. Such easement and right of use and enjoyment shall be

appurtenant to each of the Sites. Association Properties are dedicated for use by all Members, their family members, guests, and lessees, and not for use by the public. The trail easements shown on the Plat are dedicated for non-exclusive use by the Members and members of the public.

5.2 Right of Association to Regulate Use. The Association, acting through the Board, shall have the power to regulate use of Association Properties by Members and the public to further enhance the overall rights of use and enjoyment of all Members, but shall not have the power to exclude members of the public from using the trail easements shown on the Plat.

5.3 No Partition of Association Properties. No Owner shall have the right to partition or seek partition of the Association Properties or any part thereof, unless approved by the Association and the City.

5.4 Liability of Owners for Damage by Member. Each Member shall be liable to the Association for any damage to Association Properties or for any expense or liability' incurred by the Association, to the extent not covered by insurance obtained by the Association, which may be sustained by reason of the negligence or willful misconduct of such Member or any Person using the Association Properties through such Member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against a Member, to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of such Rules and Regulations (including any deductible payable by the Association under insurance obtained by the Association) or for any increase in insurance premiums directly attributable to any such damage or any such violation.

5.5 Association Duties if Damage, Destruction, or Required Improvements. In the event of damage to Association Properties by fire or other casualty or in the event any governmental authority shall require any repair, reconstruction, or replacement of any Association Properties, the Association shall have the duty to repair, reconstruct, or replace the same. Any insurance proceeds payable by reason of damage or destruction of Association Properties by fire or other casualty shall be paid to the Association and shall be used, to the extent necessary, to pay the costs of repair, reconstruction, or replacement. If funds from insurance proceeds or from reserves for replacement are insufficient to pay all costs of repair, reconstruction, or replacement of Improvements damaged or destroyed, or if the Association is required to make repairs, replacements, or Improvements by governmental authorities, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement, or improvement, levy a Special Assessment in accordance with Section 9.9, or if a Member or group of Members is liable for such damage, levy a Reimbursement Assessment against the Member or group of Members responsible therefor, to provide the additional funds necessary. Repair, reconstruction, or replacement of Association Properties shall be done under such

contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, Improvement, and operation of other Association Properties.

5.6 Association Powers in the Event of Condemnation. If any Association Properties or interests therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgagee of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners or other Persons therein. Any award or funds received by the Association shall be held by the Association in the Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of Association Properties or may be used for Improvements or additions to or operation of Association Properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

5.7 Title to Association Properties on Dissolution of Association. In the event of dissolution of the Association, the Association Properties shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental, or quasigovernmental agencies or organizations or to a nonprofit corporation, association, mast, or other organization, to be used, in any such event, for the common benefit of Owners for similar purposes for which the particular Association Property was held by the Association. To the extent the foregoing is not possible, the Association Properties shall be sold or disposed of and the proceeds from the sale or disposition shall be allocated equally to the Sites and distributed to Members.

5.8 Pedestrian Easement. There is hereby granted to the Owners and their Related Users a non-exclusive easement for pedestrian use of any sidewalk that may be located on private streets and on Lots within the Community Area.

5.9 Easement for Encroachment and Maintenance of Association Properties. There is hereby created a blanket easement across all Sites for the benefit of the Association for the purpose of entering upon the portion of any Site not within an enclosed structure to maintain, repair, replace, or remove any Association Properties, including fences installed by Declarant upon or adjacent to any landscaped tracts along public roadways which shall be maintained by the Association, maintenance of the Drainage System, and maintenance of landscaping within the Community Area. In the event any fence or other Association Properties encroach upon any Site, a valid easement is hereby created and does exist for the encroachment and for the maintenance, repair, replacement, or removal of such encroachment as long as it exists. Such encroachments or

easements shall not be considered or determined to be encumbrances on any Site for the purposes of marketability of title.

5.10 Easements Deemed Created. All conveyances of Sites or Association Properties hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements and rights contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

5.11 Recreational Facilities. No recreational facilities will be constructed by the Declarant within the Community Area.

ARTICLE 6 **DECLARANT'S RIGHTS AND RESERVATIONS**

6.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain, and reserve certain rights as hereinafter set forth with respect to the Sites, which rights include "development rights" and "special declarant rights" under the Act which may be exercised by Declarant with respect to all parts of the Community Area, the Association and the Association Properties from the date hereof, until the earliest to occur of the following events: (a) the time that all Sites that may be included in the Community Area have been conveyed by Declarant to Persons other than a successor Declarant and certificates of occupancy have been issued for the residences constructed thereon; (b) the date which is seven (7) years from the Recordation hereof; or (c) when, in its discretion, Declarant voluntarily relinquishes such rights. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant to the Association whether or not specifically stated therein and in each deed or other instrument by which any property within the Community Area is conveyed by Declarant. The rights, reservations, and easements hereinafter set forth may be exercised by Declarant with respect to all parts of the Community Area and shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded, or affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other subsequent amendment. Declarant may assign and convey any of the rights, reservations, and easements hereinafter set forth to a successor Declarant.

6.2 Right to Construct Additional Improvements on Association Properties. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey Association Properties to the Association, construct additional Improvements on Association Properties at any time and from time to time in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant shall convey or transfer Association Properties to the Association and Declarant shall convey or transfer to the Association the Improvements described in the preceding sentence if Declarant has elected to construct such Improvements or if Declarant is obligated by the County

to convey any Common Area or Improvements to the Association and the Association shall be obligated to accept title to, care for, and maintain the same as Association Properties as elsewhere provided in this Declaration.

6.3 Declarant's Rights to Use Association Properties and Sites in Promotion and Marketing of Community Area. Declarant shall have and hereby reserves the right to reasonable use of the Association Properties and Sites within the Community Area and of services offered by the Association in connection with the promotion and marketing of the Community Area. Without limiting the generality of the foregoing, Declarant may erect and maintain on any part of the Association Properties and Sites within the Community Area such signs, temporary buildings and other structures, parking lots, lighting, flag poles, flags, banners, balloons, landscaping plan deviations or other materials and techniques used to bring attention to the sales facilities, residences or other amenities and for the convenience of the same, as Declarant may reasonably deem necessary or proper in connection with the promotion, development, and marketing, and sales of real property within the Community Area. Further, Declarant may use vehicles and equipment on Association Properties and Sites within the Community Area for promotional purposes; may permit prospective purchasers of property within the boundaries of the Community Area who are not Owners or Members of the Association to use Association Properties at reasonable times and in reasonable numbers; and may refer to the Association Properties and to the Association and services offered by the Association and use the Community name(s), including, but not limited to "SIENA COURT GARDEN HOMES," in connection with the development, promotion, and marketing of property within the boundaries of the Community Area.

6.4 Right to Complete Development of Community Area. Declarant reserves the right to develop up to twenty-five (25) residential on Sites within the Community Area, and such other facilities as may be permitted by the applicable zoning ordinances. No provision of this Declaration shall be construed to prevent or limit the rights of Declarant to complete development of property within the boundaries of the Community Area or elect not to complete development of any part of the Community Area; to construct or alter Improvements on any property owned by Declarant within the Community Area provided that all such construction conforms to the requirements of this Declaration; to maintain model homes, offices for construction, sales offices, or similar facilities, including appropriate parking areas for such purposes, on any Sites or Association Properties within the Community Area; or to post signs or do any other act or thing incidental to development, construction office, promotion, marketing, or sales of property within the boundaries of the Community Area. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals from the Association, the Design Review Committee, or any other Owners: (a) to excavate, cut, fill, or grade any property within the Community Area in a manner that is materially consistent with the drainage plans previously approved by the City and in a manner that is in compliance with all requirements of the City or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant,

(b) to use any structure on any property owned by Declarant as a construction office, model home, or real estate sales office in connection with the development and sale of any property within the boundaries of the Community Area, unless and until any such use is prohibited under applicable requirements of the City; (c) to store construction materials, supplies, equipment, tools, waste or other items on property within the Community Area; or (d) to require Declarant to seek or obtain the approval of the Design Review Committee or of the Association for any such activity or Improvement to Property on any property within the Community Area. Nothing in this Section shall limit or impair the rights reserved by Declarant as elsewhere provided in this Declaration.

6.5 Declarant's Approval of Conveyances or Changes in Use of Association Properties. Until Declarant has lost the right to appoint the members of the Design Review Committee, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change, or alter the use of Association Properties, Mortgage the Association Properties, or use Association Properties other than solely for the benefit of Members or as specifically allowed hereunder.

6.6 Declarant's Rights to Grant and Create Easements. Declarant shall have and hereby reserves the right to grant or create temporary or permanent easements for access, utilities, drainage, water, and other purposes incident to development and sake of the Community Area located in, on, under, over, and across (a) Sites within the Community Area, and (b) Association Properties.

6.7 Declarant's Rights to Convey Property to Association. Declarant shall have and hereby reserves the right, but shall not be obligated to, convey real property and Improvements thereon to the Association at any time and from time to time in accordance with this Declaration. Any property conveyed to the Association by the Declarant shall not be subject to any encumbrances requiring the payment of money (other than liens for taxes not yet due and payable).

6.8 Successor Declarant. Declarant may designate as a "Successor Declarant" any person which acquires some or all of the Declarant's then remaining interest in the Community Area by an instrument which may be Recorded. Upon execution and delivery of such instrument by Declarant, the person designated as Successor Declarant therein shall accede to all of the rights and obligations of Declarant under Declaration with respect to the property acquired by such Successor Declarant and all references to Declarant contained herein shall be deemed to refer to such Successor Declarant.

6.9 Declarant's Rights to Annex Additional Property to Community Area. Declarant shall have and Declarant hereby reserves the right to, but shall not be obligated to, develop the Property in phases and, as part of such phased development, to annex part or all of the property now or hereafter owned by Declarant as described on Exhibit C to the Community Area in phases as may be determined by Declarant, so long as Declarant owns any part of the

Community Area or the property described on Exhibit C. Homes built on Sites in any property annexed to the Community Area shall be substantially the same style, quality, size and cost as homes previously constructed in the Community Area.

Property shall be annexed to the Community Area by Declarant executing and recording either a Notice of Annexation or a deed conveying a Site to an Owner other than a successor Declarant. Such Notice or deed shall describe the real property to be annexed and shall refer to this Declaration, including the date and reception number for the Recordation of this Declaration. Any property annexed to the Community Area shall be subject to the terms and conditions of this Declaration. No approval of any other Owners or Mortgagees, other than the Owner of the property to be annexed, shall be required.

Each Person who purchases any portion of the property described in Exhibit C (referred to herein as a "Parcel") subsequent to the recordation hereof, other than a successor Declarant, shall be deemed to have agreed that such Parcel shall be subject to the annexation provisions of this Section 6.9 and that the Declarant shall have the right to annex such Parcel to this Declaration pursuant to the provisions of this Section 6.9 without the necessity of obtaining the consent of the Person who has purchased such Parcel, even if such annexation occurs subsequent to conveyance of the Parcel by Declarant.

ARTICLE 7

ASSOCIATION OPERATION

7.1 Association. The Association has been or will be formed as a Texas corporation under the Texas Nonprofit Corporation Statute. The Association has been or shall be organized prior to the date the first Site located in the Community Area is conveyed to an Owner (other than a Successor Declarant). The Association shall have the duties, powers, and rights set forth in this Declaration, and in its Articles of Incorporation and By-Laws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. Except as may be provided herein, the Articles of Incorporation or the By-Laws, the Board of Directors shall be elected by owners acting in their capacity as Members of the Association.

7.2 Association Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term, and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and By-Laws. The Board of Directors may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, officer, agent, or employee without a vote of Members, except as otherwise specifically provided in this Declaration. The initial Board of Directors shall be comprised of two (2) Members.

7.3 Membership in Association. Each Owner of a Site within the Community Area shall be a Member of the Association. There shall be one Membership in the Association for each Site within the Community Area. The Person or Persons who constitute the Owner of a Site shall automatically be the holder of the Membership appurtenant to that Site, and the Membership appurtenant thereto shall automatically pass with fee simple title to the Site. Declarant shall hold a Membership in the Association for each Site owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Site except that an Owner may assign some or all of his rights as an Owner and as a Member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration, but no Owner shall be permitted to relieve himself of the responsibility for fulfillment of the obligations of an Owner under this Declaration.

7.4 Voting Rights of Members. There shall be one class of Members comprised of all of the Owners of Sites. Only one vote may be cast for each Site. Except as specifically provided otherwise in this Declaration, the Articles or the By-Laws, all matters voted on by the Members shall be voted on by all of the Members. Each Member, including Declarant, shall have the right to cast one vote for each Site owned by such Member. The By-Laws shall provide for the manner, time, place, conduct, and voting procedures for Member meetings.

7.5 Appointment and Election of Directors. From the date of formation of the Association until the termination of the Period of Declarant's Control as provided below, Declarant shall have the right to appoint and remove all members of the Board of Directors and all officers of the Association. The Period of Declarant's Control of the Association shall terminate upon the first to occur of (a) one (1) year after conveyance of ninety percent (90%) of the total number of Sites that may be included within the Community Area to Owners other than a Successor Declarant, (b) one year after the last conveyance of a Site by the Declarant in the ordinary course of business, (c) one year after the last annexation of a Site to the Community Area, or (d) at such time as the Declarant voluntarily relinquishes such right (the "Period of Declarant's Control"). Declarant may voluntarily surrender the right to appoint and remove owners and members of the Board of Directors before termination of the Period of Declarant's Control, but, in that event, Declarant may require, for the duration of the Period of Declarant's Control described above, that specified actions of the Association or Board of Directors, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Not later than one (1) year after the conveyance of ninety percent (90%) of the total number of Sites that may be included within the Community Area to Owners other than a successor Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors will be elected by Owners other than a Declarant. Not later than the termination of the Period of Declarant's Control as provided above, the Owners (including Declarant if the Declarant is still an Owner) shall elect a new Board of Directors of

three (3) members, two (2) of whom shall be elected by the Members for a term of two years and one (1) of whom shall be elected by the Members for a term of one year. Hereafter, Board members shall be elected for a term of two years upon expiration of the term of any member of the Board of Directors. At least a majority of such Board members must be Owners other than Declarant, and the Board of Directors shall elect the officers, with such Board members and officers to take office upon termination of the Period of Declarant's Control. Members of the Board of Directors and officers elected by the Declarant need not be Owners or employees of Declarant.

7.6 Directors and Officers Appointed by the Declarant. Notwithstanding anything contained herein to the contrary, but subject to the provisions of Section 7.5, the Declarant shall have the right to appoint all of the Directors and owners of the Association during the Period of Declarant's Control. All Directors and officers appointed by the Declarant shall serve at the pleasure of the Declarant, and the Declarant shall have the absolute right, at any time, and in its sole discretion, to remove any Director or officer appointed by it, and to replace such Director or officer with another person to serve on the Board or as an officer. Replacement of any Director or officer appointed by the Declarant shall be made by written instrument delivered to any officer or any other Director, which instrument shall specify the name of the person designated as successor Director or officer. The removal of any Director or officer and the designation of his successor by the Declarant shall become effective immediately upon delivery of such written instrument by the Declarant.

ARTICLE 8

DUTIES AND POWERS OF ASSOCIATION

8.1 General Duties and Powers of Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests and the property values of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Association Properties, and to improve and enhance the attractiveness, aesthetics, and desirability of the entire Community Area. The Association shall maintain all Common Areas; the Drainage System; the area within the trail easements shown on the Plat; the landscaping on Sites lying outside of privacy fences installed by Declarant; sidewalks along private and public streets on Sites; and all other portions of the Community Area required to be maintained by the Association under any Plat, site plan, or other development approval by the County, including, but not limited to, private roadways and alleys, sewers, drainage facilities, project signage and entry facilities.

8.2 Duty to Acquire and Accept Property and Facilities Transferred by Declarant. The Association shall accept title to any property, including any Improvements thereon and personal property transferred to the Association by Declarant, and equipment related thereto,

together with the responsibility to perform any and all Administrative Functions associated therewith. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests, and licenses to use. Any real property or interest in real property transferred to the Association by Declarant shall be within the boundaries of the Community Area. Any property or interest in property transferred to the Association by Declarant shall be subject to the terms of this Declaration, and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances, except mortgages and liens (other than liens for taxes not yet due and payable) requiring the payment of money. Except as otherwise specifically approved by resolution of the Board of Directors, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

8.3 Duty to Manage and Care for Association Properties. The Association shall have the duty to manage, operate, care for, maintain, repair, and replace all Association Properties and perform the Association's share of the maintenance, repair, and replacement of landscaping and Improvements within the Community Area that are the responsibility of the Association to maintain as set forth elsewhere in this Declaration, and to keep the same in an attractive and desirable condition for the use and enjoyment of the Members, including, but not limited to, all streets owned by the Association.

8.4 Duty to Manage and Care for Certain Areas of Sites. The Association shall have the duty to maintain, repair, and replace all landscaping installed by Declarant on Common Areas, fences on Sites or Common Areas installed by Declarant or the Association, and may maintain, repair, and replace such other Improvements on the Sites as the Board of Directors may approve in writing.

8.5 Power to Pay Taxes. The Association shall have the power to pay all taxes and assessments levied upon the Association Properties and all taxes and assessments payable by the Association. The Association shall have the right to contest any such taxes or assessments provided that the Association shall contest the same by appropriate legal proceedings or protest provisions before the County & City Assessor and other public entities.

8.6 Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect, property insurance on all insurable Improvements and personal property owned by the Association or that may be owned by the Association in the future, for broad form covered causes of loss, including, casualty, fire, and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Association including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property,

less reasonable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies. If any part of the Community Area is located in a special flood hazard area, the Association shall carry a master policy of flood insurance on the Common Area.

8.7 Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Association Properties and covering public liability for bodily injury and property damage and, if the Association owns or operates motor vehicles, public liability for bodily injury and property' damage arising as a result of the ownership and operation of motor vehicles. Such liability insurance for other than motor vehicle liability shall, to the extent reasonably obtainable: (a) have limits of not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) in the aggregate per occurrence; (b) insure the Board, the Association, the Design Review Committee, the Manager, the Declarant, and their respective employees, agents, owners, officers, directors, and all Persons acting as agents of the foregoing; (c) include the Declarant as an additional insured in such Declarant's capacity as a Member or Board member; (d) include the Members as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of Association Properties; and (e) cover claims of one or more insured parties against other insured properties.

8.8 General Provisions Respecting Insurance. The Board of Directors may obtain insurance that does not include each and every one of the insurance requirements set forth in this Declaration if the Board of Directors determines that a provision cannot be obtained from an insurance company at a reasonable cost to the Association. However, the Association must carry casualty insurance and liability' insurance. Insurance obtained by the Association may contain such deductible provisions as the Board of Directors may determine. If any insurance described above is obtained and thereafter is not reasonably available, or if any policy of such insurance is canceled or renewed without a replacement policy therefor having been obtained for it, the Association shall promptly cause notice of that fact to be delivered to all Members. The Association may carry any other type of insurance it considers appropriate in amounts it deems appropriate, to insure the interests of the Association. Insurance policies carried pursuant to Sections 8.6 and 8.7 shall provide that: (a) each Member is an insured Person under the policy with respect to liability arising out of such Member's interest in the Association Properties or membership in the Association; (b) the insurer shall waive its right of subrogation under the policy against any Member or such Member's household; (c) no act or omission by any Member, unless acting within the scope of such Member's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; (d) if at the time of a loss under the policy, there is other insurance in the name of a Member covering the same risk covered by the policy, the Association's policy shall be the primary insurance; and (e) shall meet all applicable

requirements of FNMA and other governmental and quasi-governmental entities to the extent applicable to the Community Area.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. At Declarant's request, insurance obtained by the Association shall, to the extent reasonably possible and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant. Insurance policies and insurance coverage may be reviewed annually by the Board of Directors to ascertain whether coverage under the policies is sufficient in light of the current values of the Association Properties and in light of the possible or potential liabilities of the Association. The aforementioned insurance may be provided under blanket policies covering the Association Properties. In no event shall insurance coverage obtained or maintained by the Association be bought into contribution with insurance purchased by Owners, occupants or their Mortgagees.

8.9 Fidelity Bonds. The Association may obtain and keep in force a fidelity bond or bonds for any Person handling funds of the Association. Each such bond shall name the Association as obligee and shall be in such amount as the Board of Directors determines. The Board of Directors may request any Person employed as an independent contractor by the Association for the purpose of managing the Association Properties to obtain and maintain fidelity insurance in an amount determined by the Board.

8.10 Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity, or other bonds as the Association shall deem necessary or desirable.

8.11 Prepare Budgets. The Association shall prepare Budgets for the Association as elsewhere provided in this Declaration.

8.12 Power to Levy and Collect Assessments. The Association may levy and collect Assessments as elsewhere provided in this Declaration.

8.13 Duty to Keep Association Records. The Association shall keep financial records sufficiently detailed to provide a statement setting forth the amount of any unpaid Assessments currently levied against an Owner. Such records shall be made reasonably available for examination by any Member and such Member's authorized agents.

8.14 Duties With Respect to Design Review Committee Approvals. The Association shall perform functions to assist the Design Review Committee as elsewhere provided in this Declaration.

8.15 Power to Acquire Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners including Improvements and personal property. The Association may construct Improvements on property and may demolish existing Improvements.

8.16 Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed reasonably necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Association Properties, and the use of any other property within the Community Area, including Sites. Any such Rules and Regulations shall be effective only upon adoption by resolution of the Board of Directors. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Member at the address for notices to Members as elsewhere provided in this Declaration or the By-Laws, and copies of the currently effective Rules and Regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

8.17 Power to Enforce Declaration and Rules and Regulations. The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each member and each Person claiming by, through, or under such Member ("Related User"). Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations by any one or more of the following means: (a) by entry upon any property within the Community Area, without liability to the Owner thereof or the Association, for the purpose of enforcement or causing compliance with this Declaration or the Rules and Regulations; (b) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of this Declaration or the Rules and Regulations, by mandatory injunction or otherwise; (c) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of this Declaration or the Rules and Regulations; (d) by suspension of the voting rights of a Member during and for up to sixty (60) days following any breach by such Member or a Related User of such Member of this Declaration or the Rules and Regulations, unless the breach is a continuing breach in which case such suspension shall continue for so long as such breach continues; (e) by

levying and collecting a Reimbursement Assessment against any Member for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member; and (D) uniformly applied fines and penalties, established in advance in the Rules and Regulations of the Association, from any Member or Related User for breach of this Declaration or the Rules and Regulations by such Member or Related User of such Member. Any Rules and Regulations which adopt a system of fines shall include a procedure to require notice and provide an opportunity for an Owner to be heard prior to imposing a fine.

8.18 Power to Grant Easements. The Association shall have the power to grant access, utility, drainage, water facility, and other easements in, on, over, or under Association Properties and the portion of Sites outside the footprint of the Residence constructed thereon.

8.19 Power to Convey and Dedicate Property to Government Agencies. The Association, with the approval of Members representing at least sixty-seven percent (67%) of the voting power of the Association (exclusive of the voting power of the Declarant), shall have the power to grant, convey, dedicate, or transfer any Association Properties or facilities to any public, governmental or quasi-governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate.

8.20 Power to Borrow Money and Mortgage Property. The Association shall have the power to borrow money and, with the approval of Members representing at least sixty-seven percent (67%) of the voting power of the Association (exclusive of the voting power of Declarant), to encumber Association Properties as security for such borrowing. An agreement to convey, or subject the Association Properties to a security interest in accordance with this Declaration shall be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed by the requisite number of Owners. The agreement shall specify a date after which the agreement will be void unless Recorded before that date and shall be effective upon Recordation.

8.21 Power to Engage Employees, Agents, and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, management, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration. The Board of the Directors of the Association shall use its best efforts to obtain competitive proposals for the aforementioned consultant services.

8.22 Trash Collection. The Association shall have the power to regulate the days and hours during which trash, solid waste and recycling materials, if offered, may be collected or put out for collection in any part of the Community Area, it is provided by a public agency. The Association also shall provide or contract for the provision of services for the collection of trash, solid waste and, if reasonably available, recycling materials, within the Community Area, if such service is not provided by a public agency. The cost of such trash collection shall be included in

Common Assessments. The area(s) to be served and the frequency and type of such service shall be determined by the Board of Directors.

8.23 General Corporate Powers. The Association shall have all of the powers and rights of an association under the Texas Property Code and all of the ordinary powers and rights of a Texas corporation formed under the Texas Business Organization Code (TBOC), including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or By-Laws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or By-Laws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or By-Laws.

8.24 Powers Provided by Law. In addition to the above-referenced powers, the Association shall have full power to take and perform any and all actions which may be lawfully taken by the Association under the Texas Business Organization Code (TBOC).

ARTICLE 9 **ASSESSMENTS**

9.1 Obligation and Lien for Assessments. Each Owner, by acceptance of a Deed to a Site that has been annexed to this Declaration, agrees to pay to the Association, Assessments, together with interest, late charges, cost of collection, and attorneys' fees as provided herein. Such Assessments, interest, late charges, cost of collection, and attorneys' fees shall also be a continuing lien upon the Site against which each Assessment is made in the event of delinquency in payment. Such Assessments, interest, late charges, cost of collection, and attorneys' fees shall also be the personal obligation of the person who was the Owner, or the persons, jointly and severally, who were the Owners at the time the Assessment was made. Assessments may consist of Common Assessments, Special Assessments, and Reimbursements Assessments.

9.2 Allocation of Assessments/Working Capital. All Assessments (other than Reimbursements Assessments) will be allocated equally among the Sites that have been annexed to this Declaration, except as provided in the following sentences. Notwithstanding any other provisions of this Declaration to the contrary, all Assessments (other than Reimbursement Assessments) imposed on Sites that are unimproved or which do not have a certificate of occupancy issued for improvements constructed thereon (which Sites are referred to herein as ("Unfinished Sites")) shall be set at a lower rate than the rate of Assessments imposed on other Sites that have a completed residence and certificate of occupancy and which are required to pay a full Assessment. Such lower assessment shall be based on a determination by the Board of Directors of the Association of the benefits that are actually received by such Unfinished Sites and the services provided to the Owners of other Sites that are not actually received by such

Unfinished Sites, including replacement reserves that do not benefit Unfinished Sites, as provided or amended. Upon issuance of a certificate of occupancy for improvements constructed on an Unfinished Site, such Site shall be assessed at the full assessment rate commencing the first day of the month immediately following the month in which the Site is occupied by the Owner or a Related User of the Owner after issuance of the certificate of occupancy. Such reduced assessment rate for Unfinished Sites is based on the fact that Unfinished Sites do not receive the same benefits from assessments as Sites for which certificates of occupancy have been issued.

Upon conveyance of a Site to an Owner, other than a Successor Declarant, by the Declarant, the Purchaser of the Site shall pay to the Association a sum equal to three (3) times the Common Assessment then in effect as working capital for the Association. Upon the subsequent sale of such Site, the Purchaser may be required to pay a working capital contribution to the Association in an amount determined by the Board of Directors of the Association. Under no circumstance may an Owner obtain repayment of such contribution from the Association.

9.3 Common Assessments and Initial Assessment. For each calendar year, the Association may levy annual Common Assessments against Owners of the Sites which is to be collected monthly. Each Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the Site of such Owner. For the purposes of the calendar year 2023, the amount of and commencement date for payment of the initial Common Assessment shall be determined by the Board of Directors (the "Initial Assessment"), subject to the requirements of Sections 9.5 and 9.8 below. The applicable portion or portions of the Initial Assessment; shall be payable by the Owner of any Site at such time as the Owner of such Site takes title to the Site. The Initial Assessment paid by the Owner of a Site shall be prorated to reflect the time that the Owner took title to the Site. Until such time as the Initial Assessment commences, the Declarant shall pay the expenses of the Association.

9.4 Supplemental Common Assessments. If the estimated sums required for Common Assessments prove inadequate for any reason, including non-payment of any Owner's Common Assessment, the Board may, from time to time, levy a Supplemental Common Assessment. Such Supplemental Common Assessments shall be allocated among the Sites in the same manner Common Assessments are allocated. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change, and shall be submitted to the Members as part of a supplemental budget proposal pursuant to Section 9.5 below.

9.5 Annual Budgets. The Board of Directors shall cause to be prepared a Budget for each calendar year prior to imposing any Assessments and prior to the commencement of each calendar year. The Budget shall include an amount for normal operations and maintenance, for contingencies, and amounts deemed necessary or desirable for deposits to create, replenish, or add to the reserve fund for major capital repairs, replacements, and improvements to the

Association Properties in such amounts as the Board of the Association deems appropriate. If there is any surplus remaining at the end of a budget year, the Association shall be entitled to retain such surplus to use for purposes permitted under this Declaration. Copies of the Budget shall be made available by the Association to any Members requesting a copy of the same upon payment of the reasonable expenses of copying the same.

Within ninety (90) days after adoption of any proposed budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver the full budget or a summary of the budget to all Owners and shall set a date for a meeting of Owners to consider ratification of the budget, which date shall be within a reasonable time after mailing or other delivery of the budget or summary thereof. Unless at that meeting at least seventy-five percent (75%) of all Owners vetoed the budget, the budget is deemed to be approved by the Owners, whether or not a quorum is present. In the event the proposed budget is vetoed, the periodic budget last not vetoed by the Owners shall be continued and assessments shall be based thereon until such time as the Owners fail to veto a subsequent budget proposed by the Board of Directors.

9.6 Commencement of Common Assessments. Common Assessments shall commence as to each Site within the Community Area on the first day of the first month following the date of Recordation of the first Deed conveying a Site within the Community Area to an Owner other than Declarant or a Successor Declarant. The Common Assessments for the then current calendar year shall be prorated within the Community Area on the basis of the number of months in such calendar year remaining from the date of commencement of such Common Assessments to the end of such calendar year. Prior to the commencement of assessments, the Declarant shall be responsible for all costs of the Association.

9.7 Payment of Common Assessment. Annual Common Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in equal semi-annual installments, on or before the first day of each period, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Annual Common Assessments shall be given to each Member prior to January 1 of each year.

9.8 Failure to Fix Assessment. The failure by the Board of Directors to levy an Assessment for any year shall be deemed to be a continuation of the Assessment previously levied by the Association pursuant to the Budget adopted for the previous year and shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay Assessments, or any installment thereof, for that or any subsequent year. No abatement of the Common Assessment or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to Association Properties or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

9.9 Special Assessments for Capital Expenditures. After termination of Declarant's right to appoint members of the Board of Directors of the Association, in addition to Common Assessments, the Board of Directors may, subject to the provisions of this Article 9, levy and include in the budget Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon Association Properties, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board of Directors shall not levy Special Assessments without the vote of the Members representing at least sixty-seven percent (67%) of the voting power of all Members at a meeting, written notice of which shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Special Assessments shall be allocated in the same manner as Common Assessments. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

9.10 Reimbursement Assessments. The Board of Directors may, subject to the provisions hereof, levy a Reimbursement Assessment against any Member if the willful or negligent failure of the Member or a Person claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations shall have resulted in the expenditure of funds by the Association to cause such compliance. Such Assessment shall be known as a Reimbursement Assessment and shall be levied only after approval by the Board. The amount of the Reimbursement Assessment for each Site shall be based upon such criteria and factors as the Board of Directors determines to be appropriate and shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors that the Reimbursement Assessment is due and owing.

9.11 Late Charges and Interest. If any Common Assessment, Special Assessment., or Reimbursement Assessment or any installment thereof is not paid within ten (10) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be determined by the Board. Any Assessment or installment of an Assessment which is not paid within ten (10) days after it is due shall bear interest from the due date at the interest rate established by the Board from time to time.

9.12 Attribution of Payments. All Common Assessment payments shall be credited first to late fees, interest, attorneys' fees, and other costs of collection, and next to principal reduction, satisfying the oldest obligations first followed by any recurrent obligations.

9.13 Notice of Default and Acceleration of Assessments. If any Annual Common Assessment, any Special Assessment, or any Reimbursement Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default ("Notice of Default") to the Owner and to each Mortgagee of the Site who has requested a copy of the notice. The notice shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which such default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the entire balance of the Assessment or the unpaid installments of the Assessment against the Site of the Member. If the delinquent Assessment or installment and any the charges, legal fees or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law in this Declaration, subject to the protection afforded to the Mortgagees under this Declaration.

9.14 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special, or Reimbursement, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

9.15 Lawsuit to Enforce Assessments. The Board may bring suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

9.16 Lien to Enforce Assessments. All Assessments against a Site (including late fees, interest, cost of collection and attorneys' fees) shall constitute a lien on such Site superior to all other liens and encumbrances, except: (a) tax and special assessment liens in favor of any assessing authority; (b) liens and encumbrances Recorded prior to recordation of this Declaration; and (c) all sums unpaid under a Mortgage encumbering a Site ("First Mortgage") that has first priority over any other Mortgage encumbering such Site to the extent the Assessments were assessed after the First Mortgage is Recorded. By acceptance of a deed for a Site, the Owner or Owners agree that the Assessment lien shall be prior to any homestead exemption or right and irrevocably waive any and all rights they may have to claim a homestead exemption against enforcement of the Assessment lien.

Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a period budget

adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action to enforce or extinguish the statutory lien or the lien of the First Mortgage.

The recording of this Declaration constitutes record notice and perfection of the Assessment lien. No further recordation of any claim of lien or Assessment is required. However, to evidence such lien, the Association may Record a written notice setting forth the amount of such unpaid Assessments, the name of the Owner of the Site and the identification of the Site. Such notice shall be signed by one of the Board of Directors, an officer of the Association or an agent appointed by the Board and shall be Recorded. The recording of a notice of lien shall not be a condition precedent to nor delay the attachment of a lien which shall attach as of the first day of any period for which any Assessment is levied. Such lien may be enforced by foreclosure on the defaulting Owner's Site by the Association in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Site, which lien on rents and profits shall be subordinate to the matters described in subparagraphs (a) and (b) above. The Association shall have the power to bid at the foreclose sale and to acquire and hold, lease, mortgage and convey the Site. The Association shall have all the rights and obligations with respect to enforcement of Assessment liens which are set forth in the Act.

9.17 Estoppel Certificates. Upon the written request delivered personally or by certified mail, return receipt requested, first-class postage prepaid, addressed to the Association's registered agent, of any Member or his designee and any Person with, or intending to acquire, any right, title, or interest in the Site of such Member, or of any mortgagee or its designee, the Association shall furnish a statement setting forth the amount of any Assessments or other amounts, if any, due and accrued and then unpaid with respect to a Site and the Owner thereof, and setting forth the amount of any Assessment levied against such Site which is not yet due and payable. Such statement shall, with respect to the Person to whom it is issued, be sent to the requesting person within fourteen (14) days after receipt of the written request and, if sent within such time period, shall be conclusive against the Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

9.18 No Offsets. The payment of Assessments is an independent covenant and all Assessments shall be payable in the amounts specified in the levy thereof without notice or demand (except as may be specifically required in this Declaration), and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors in not properly exercising its duties and powers under this Declaration or Owners' vacation or abandonment of their residence.

9.19 Other Liens. It is possible that liens other than mechanics' liens and Assessment liens may be obtained against Association Properties, including, without limitation, judgment liens, and purchase money mortgage liens.

9.20 Reserve Fund. In connection with establishing and collecting Common Assessments for funding the Maintenance Funds for the Common Area, the following restrictions shall apply:

- A. The Maintenance Funds shall not be commingled with any other Association fund;
- B. The balance of the Maintenance Funds shall be equal to the total replacement cost of the improvements divided by the average life expectancy of such Common Areas, multiplied by the age of the improvements. The life expectancy for a subdivision with private streets shall be a minimum of twenty (20) years;
- C. The Association shall have an annual review performed by a certified public accounting firm verifying that the amount in the reserve fund complies with the requirements herein and copy of the review shall be provided to the City; and
- D. If the private streets within the Common Areas are converted to the public, that portion of the Maintenance Funds reserved for the maintenance of the private street shall become the property of the City

ARTICLE 10 **MISCELLANEOUS**

10.1 Term of Declaration. Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect for a period of forty (40) years after the date this Declaration is Recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each terminated by the vote, by written ballot, of Members holding at least sixty-seven percent (67%) of the voting power of Members of the Association at duly constituted meetings of the Members. In the event this Declaration is terminated, the termination of this Declaration shall be evidenced by a termination agreement ("Termination Agreement"), or ratification thereof, executed by the requisite number of Owners. The Termination Agreement shall specify a date after which the Termination Agreement will be void Recorded before such date. The Termination Agreement shall be recorded and the termination of this Declaration shall be effective upon such Recording. Notwithstanding the foregoing, the Association's right to terminate or modify any of its obligations to maintain the private streets and roadways within the Common Areas is subject to the prior written approval of

the City, such approval to be in the City's sole discretion. Furthermore, the Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Areas and/or its private streets or roadways without the prior written approval of the City, such approval to be in the City's sole discretion.

10.2 Amendment of Declaration by Members. Notwithstanding anything contained in this Declaration to the contrary: (i) the provisions of this Declaration shall not be amended or deleted from this Declaration without the prior written consent of the City; (ii) this Declaration may not be amended to alter any provisions regarding the use, operation, or maintenance of the private streets, roadways, or other common areas that are the responsibility of the Association or the Declarant without the prior written consent of the City or otherwise permit any condition at or use of the Common Area in a manner that conflicts with or violates any City ordinance without the prior written consent of the City; and (iii) this Declaration may not be terminated without the prior written consent of the City. Except as otherwise provided in this Declaration, including Section 6.1, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provisions, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Association holding at least sixty-seven percent (67%) of the voting power of the Association present in person or by proxy at duly constituted meetings of the Members; provided, however, that at any time Declarant owns a Site which is subject to this Declaration (or any portion of the property which is eligible for annexation to this Declaration), any amendment to this Declaration shall be approved by Members of the Association holding at least sixty-seven percent (67%) of the voting power of the Association present in person or by proxy at duly constituted meetings of the Members. The approval of any such amendment or repeal shall be evidenced by the certification by the Board of Directors of the Association of the votes of Members. The amendment or repeal shall be effective upon the Recordation of a certificate, executed by the President or a Vice President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the required vote of the Members. Any Amendment to the Declaration made hereunder shall be effective only when Recorded.

10.3 Member and First Mortgagee Approval. Notwithstanding any other provisions of this Declaration to the contrary, the Association shall not: (I) Unless it has obtained the prior consent of at least seventy-five percent (75%) of the Members or the consent of sixty-seven percent (67%) of the First Mortgagees of Sites (based on one vote for each First Mortgage held):

- (a) Seek to abandon or terminate the Declaration, whether by act or omission;

- (b) Change the pro rata interest or obligations of any individual Site for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;
- (c) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Association Properties (excluding the granting of permits, licenses, and easements for public utilities, roads, or other purposes reasonably necessary or useful for the proper maintenance or operation of the Association Properties);
- (d) Amend any provisions of this Declaration or the Articles of Incorporation or By-Laws of the Association which are for the express benefit of First Mortgagees; and
- (e) Use hazard insurance proceeds for losses to any part of the Association Properties for other than the repair, replacement, or reconstruction of such part of the Association Properties.
- (f) Unless, within thirty (30) days after receipt of notice, a First Mortgagee or insurer or guarantor of a First Mortgage notifies the Association of its disapproval of any of the matters requiring their approval as provided herein, the approval of such First Mortgagee or insurer or guarantor of a First Mortgage shall be deemed to have been given.

10.4 Amendment of Articles and By-Laws. The Articles of Incorporation and By-Laws may be amended in accordance with the provisions set forth in such instruments and any applicable provisions of this Declaration or, in the absence of such provisions, in accordance with applicable provisions of the Texas Nonprofit Corporation Statute (TBOC).

10.5 Special Rights of First Mortgagees. Any First Mortgagee of a First Mortgage encumbering any Site in the Community Area which has filed a written request with the Association to be notified of any proposed action requiring First Mortgagee consents, shall be entitled to:

- a) Receive written notice from the Association of any default by the Mortgagor of such Site in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default;
- b) Examine the books and records of the Association during normal business hours;

- c) Receive a copy of financial statements of the Association including any annual financial statement within ninety (90) days following the end of any fiscal year of the Association;
- d) Receive written notice of all meetings of Members;
- e) Designate a representative to attend any meeting of Members;
- f) Receive thirty (30) days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles of Incorporation, or the By-Laws requiring consent of a certain percentage of First Mortgagees;
- g) Receive immediate notice as soon as the Association receives notice or otherwise learns of any damage to the Association Properties, if the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Association Properties; and
- h) Receive written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

10.6 First Mortgagee Exemption from Rights of First Refusal. Any such First Mortgagee who obtains title to any Site pursuant to the remedies provided in the Mortgage held by such First Mortgagee or pursuant to any foreclosure of Mortgage or by deed or assignment in lieu of foreclosure shall be exempt from any right of first refusal if any such right of first refusal is ever contained in this Declaration.

10.7 Priority of First Mortgage Over Assessments. Each First Mortgagee of a Mortgage encumbering a Site who obtains title to such Site pursuant to the remedies provided in the Mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure shall take title to the Site free and clear of any claims for unpaid Assessments or charges against such Site which accrued prior to the time such holder acquires title to such Site in excess of the amount of Assessments which is prior to the lien of the First Mortgage as provided in Section 9.19 above.

10.8 First Mortgagee Right to Pay. Taxes and Insurance Premiums. Any such First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the Association Properties and may pay any overdue premiums on hazard insurance policies for any Association Properties, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

10.9 Association Right to Mortgage Information. Each Owner hereby authorizes any First Mortgagee holding a Mortgage on such Owner's Site to furnish information to the Association concerning the status of such First Mortgage and the loan which it secures.

10.10 Amendment Required by Government Mortgage Agencies. Notwithstanding the provisions of Article 10 hereof, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration which any Government Mortgage Agency requires to be amended or repealed may be amended or repealed solely by Declarant and no approval, consent, or vote of any other person or entity shall be required. Declarant's rights under this Section 10.10 shall terminate on the earlier of ten (10) years after the date of recordation of this Declaration or the sale of all Sites owned by Declarant or a Successor Declarant. Any such amendment or repeal shall be effective upon the Recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full. "Governmental Mortgage Agency" shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved, or sponsored by any governmental agency to insure, guarantee, make, or purchase Mortgage loans. "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States Government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of Trust on residential real estate. "VA" shall mean the Department of Veterans Affairs of the United States of America, including such department or agency of the United States Government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on Sites. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto. "FNMA" shall mean the Federal National Mortgage Association, a governmental-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto. "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Urban Development, including any successor thereto.

10.11 Notices. Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail, facsimile, or email. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the Site of such Person if no address has been given to the Association and shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second business day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association. **The Association shall provide and maintain an address and telephone contact with the City Secretary's office of the City of Boerne.**

10.12 Persons Entitled to Enforce Declaration. The Association, acting by authority of the Board, and any Member of the Association shall have the right to enforce any or all of the

provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any property within the Community Area and the Owner thereof, as well as the family members, guests, invitees, and tenants of each Owner. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

Notwithstanding any other provisions of this Declaration to the contrary, any action brought by the Association in which it seeks to recover an unspecified amount of damages or damages in excess of \$25,000.00 shall first be approved by the vote of the Members holding at least seventy-five percent (75%) of the voting power of the Association and First Mortgagees holding Mortgages on at least seventy-five percent (75%) of the Sites. All costs and fees to be incurred in connection with such action shall be described in a budget which is approved by the vote of Members holding at least seventy-five percent (75%) of the voting power of the Association at the same time as the required vote of the Members is obtained to bring the action and by First Mortgagees holding Mortgages on at least seventy-five percent (75%) of the Sites. Any expenditure in excess of such approved budget shall be approved as an amendment to the budget which is approved by the same percentage vote of the Members and First Mortgagees. The proposed litigation budget and a summary of the claims to be asserted in the action shall be mailed to all of the Members and First Mortgagees with a notice of the meeting describing the purpose of the meeting at least thirty (30) days prior to the date of the meeting. The costs and fees incurred in connection with such action shall be assessed against all of the Owners, other than the Owner against whom any such action is proposed, as a Special Assessment. Such costs and fees shall not be paid from Common Assessments. The Association may not bring an action for breach of warranty or other claims that do not arise out of a violation of the provisions of this Declaration. The foregoing requirements shall not apply to any action brought by the Association to collect assessments from Members or to obtain injunctive relief in connection with a violation of the provisions of this Declaration, whether or not the Association seeks to recover its costs of suit and attorneys' fees.

10.13 Violations Constitute a Nuisance. Any violation of any provision, covenant, condition, restriction, and equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

10.14 Enforcement of Self-Help. Declarant or the Association, or any authorized agent of any of them, may enforce, by self-help, any of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration.

10.15 Violations of Law. Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any property

within the Community Area is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

10.16 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

10.17 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

10.18 Limitation on Liability. The Association, the Board of Directors, the Design Review Committee, Declarant, and any Member, owner, officer, director, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

10.19 No Representations or Warranties. No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Community Area, or any Improvement thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, and except as shall be specifically set forth in writing.

10.20 Liberal Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

10.21 Governing Law. This Declaration shall be construed and governed under the laws of the State of Texas.

10.22 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability of the provisions or portion thereof shall not affect the validity or enforceability of any other provision.

10.23 Number and Gender. Unless the context requires a construction, the singular shall include the plural and the plural the singular, and the masculine, feminine, or neuter genders shall each include the masculine, feminine, and neuter genders.

10.24 Captions for Convenience. The titles, headings, and captions used in this Declaration are intended solely for convenience of reference and shall not be construed in construing any of the provisions of this Declaration.

10.25 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights, and obligations may, by operation of law, be

transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving consolidated association may administer and enforce the covenants, conditions, and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property as one plan.

10.26 Disclaimer Regarding Safety. DECLARANT HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA. ANY OWNER OF PROPERTY WITHIN THE COMMUNITY AREA ACKNOWLEDGES THAT DECLARANT IS ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND IS NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMUNITY AREA.

10.27 Recorded Easements. In addition to all easements and rights-of-way of record at or before recordation of this Declaration, the Community Area, and all portions thereof, shall be subject to the easements shown on any Recorded plat or map of the Community Area, or any portion thereof. Further, the Community Area, or portions thereof, is now or may hereafter be subject to the easements, licenses, and other Recorded documents, or any of them, set forth on Exhibit D attached hereto and incorporated herein by this reference.

10.28 Association Books and Records. The Association may charge a fee for the reasonable copying costs, management fee, and labor costs of any materials provided pursuant to this Section. The Association shall maintain accurate and complete accounting records and shall maintain records of meeting minutes, board actions, committee actions, notices of meetings, and a record of all voting unit owners and their addresses. The Association shall keep at its principal office and make available to Owners, First Mortgagees of Sites and insurers or guarantors of any such First Mortgage, current copies of this Declaration, the Articles of Incorporation, By-Laws, rules and regulations, books, records and financial statements of the Association, resolutions adopted by the Board or any committee of the Board, minutes of all Owners' meetings and actions for at least three years, written communications to Owners for at least three years, a list of the names and addresses of current directors and officers of the Association, the most recent annual report, and all audits and financial reviews for at least three years. The Association shall make available to prospective purchasers of Sites current copies of this Declaration, and the Articles of Incorporation, By-Laws, rules and regulations, minutes of Association and Board meetings for the prior six months, and the most recent annual audited financial statement, if such is prepared, of the Association. "Available" shall mean available for inspection, upon request that is made in good faith and for a proper purpose and for records that are relevant to such proper purpose, during normal weekday business hours or under other reasonable circumstances. The Association

may charge a fee for inspection and copying of the Associations books and records, not to exceed the Association's actual costs.

10.29 Statement of Unpaid Assessments. The Association shall provide to an Owner or its designee or to a holder of a security interest or its designee, upon written request, a statement setting forth the amount of unpaid assessments currently levied against such Owner's Site, as provided in Section 9.17 above.

10.30 Delivery of Information to Owners and Turnover of Control. Within ninety (90) days after the first election of a Board of Directors after the end of the Declarant Control Period, and within ninety (90) days after the end of each fiscal year thereafter, the Association shall make the following information available to Owners at the Association's principal place of business:

- (a) Fiscal year commencement date;
- (b) Current fiscal year operating budget;
- (c) List of the Association's current assessments (regular and special) by Unit Annual financial statements, including amounts held in reserve for the previous fiscal year;
- (d) The results of its most recent available audit;
- (e) List of all Association insurance policies, including names, limits, deductibles, additional named insureds, and expiration dates;
- (f) All By-Laws, Articles of Incorporation, and Rules and Regulations of the Association;
- (g) Board and Member meeting minutes for the previous fiscal year, and (i) The Association's governance policies.

Such information also may be disclosed by posting the information on the Association's website and providing notice of the Association's website to all Owners via e-mail or first-class mail, or the Association may mail or deliver such information to all of the Owners.

10.31 Information to be Provided to Owners Annually. At least annually, and within ninety (90) days after any of the following information changes, the Association shall provide written notice to all Owners, stating the following:

- (a) Name of Association;
- (b) Name of designated agent or management company of the Association, if any;
- (c) Valid physical address and telephone number for the Association and its agents;
- (d) Name of the Common Interest Community;

- (e) Initial date of recording of the Declaration; and
- (f) The Reception Number or book and page number for the Declaration.

10.32 Association Financial Review and Audit Requirements. The Association shall perform a review of its financial records, using "Statements on Standards for Accounting and Review Services," or an audit of its financial records using generally accepted auditing standards, by an independent and qualified person selected by the Board of Directors of the Association when required under the following provisions. An audit shall be required only if the Association has annual revenues or expenditures in excess of \$25,000 and the audit is requested by at least one-third (1/3) of the Owners. A review shall be required only when requested by the owners of at least one-third (1/3) of the Owners. Copies of an audit or review shall be made available upon request to any Owner, beginning no later than thirty (30) days after its completion. The Association also shall provide an audited financial statement for the immediately preceding fiscal year to any First Mortgagee or any insurer or guarantor of such First Mortgage, within a reasonable time after written request therefore is made by any such First Mortgagee, or insurer, or guarantor of any First Mortgage; provided that if the Association has not previously received an audit for such fiscal year, the Association may require the requesting First Mortgagee, or insurer, or guarantor of a First Mortgage to pay the expense of the audit to the Association in advance.

10.33 Responsible Governance Policies. The Association shall adopt, and may amend from time to time, responsible governance policies as required under the Act regarding the Association's methods for keeping accounting records and adopting policies, procedures, and Association Rules concerning the collection of unpaid assessments, Board members' conflicts of interest, the conduct of meetings, enforcement of the Declaration, including notice and hearing procedures and the assessment of fines, policies on the investment of the Association's reserve funds, inspection and copying of Association records by owners, procedures for addressing disputes arising between the Association and Owners, and procedures for adoption and amendment of its policies, procedures, and rules.

ARTICLE 11

SPECIAL PROVISIONS REGARDING RIGHTS OF THE CITY

11.1 City's Right to Cure The Association shall own and be responsible for the maintenance of private streets and appurtenances and the City shall not be required to pay for or assist with any portion of the construction or maintenance of such private streets, common areas, and appurtenances, provided, however that the City shall have the right, but not the obligation, to inspect all private streets and require that the Association complete such repairs thereto as may be reasonably necessary to ensure that the same are maintained in compliance with Applicable Law.

Should the Association fail to carry out its duties, the City or its lawful agents shall have the right and ability, after due written notice to the Association and opportunity to cure, to the following remedies:

1. To perform the responsibilities of the Association if the Association fails to do so in compliance with any of the provisions of any Applicable Law and to assess the Association or the individual lot owners for all costs incurred by the City in performing said responsibilities if the Association fails to do so, and the City shall further have any and all liens and lien rights granted to the Association to enforce the assessments required by the Declaration and to avail itself of any other enforcement actions available to the City pursuant to Applicable Law. In the event that the City shall perform the obligations of the Association as provided for above, the City shall have the right to either file a lien on the Common Area to secure the repayment to the City for the costs of maintaining, repairing, replacing or making safe any Common Areas;
2. to convey to the City ownership of all or part of the Common Areas either before or after exercising the City's rights under (1) herein above; and authorize the City, upon taking ownership of the Common Areas to remove any improvements or amenities from the Common Areas and sell any buildable land area as residential lots to recoup the City's expenses for maintenance or demolition of the improvements within the Common Areas. Any money that remains after the City has recovered all of its expenses, including any necessary and reasonable legal expenses, shall be retained for future maintenance or upgrading of the Common Areas (if any remain), screening walls, or other improvements within the subdivision. These provisions are not intended to allow the City to profit in any way from taking over the Association's responsibilities or funds; they are only intended to allow the City to recoup its actual incurred expenses. In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City, its agents, representatives and employees, shall have the right of access, ingress and egress to and over the Common Areas for the purposes of maintaining, improving and preserving the same.

11.2 Petition to Convert to Public Streets. The Association shall be permitted to petition the City to accept private streets and any associated property as public streets and rights-of-way upon written notice to all Association members and upon the favorable vote of a majority of the membership. However, in no event shall the City be obligated to accept said streets as public streets. Should the City elect to accept the streets as public streets, then the

City has the right to inspect the private streets and to assess the lot owners for the expense of needed repairs concurrent with the City's acceptance of the streets. The City shall be the sole judge of whether repairs are needed. Upon acceptance of the private streets as public streets the City may also require, at the Association's or the lot owners' expense, the removal of any guard houses, access control devices, landscaping or other aesthetic amenities located within the street lot or within any other roadway common area that are not consistent with a public street development. Those portions of the Association documents pertaining to the subject matter contained in this Section shall not be amended without the written consent of the City Council. However, the Association documents must be modified to remove requirements specific to private street subdivisions at such time as the City accepts the private streets as public streets.

11.3 Hold Harmless. The subdivision final and recorded plat shall contain language whereby the property (or home) owners' association, as owner of the private streets and appurtenances, agrees to release, indemnify, defend and hold harmless the City, any other governmental entity, and any public utility for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury (including death) arising from the condition of the private streets, out of any use of access gates or cross arms, or out of any use of the subdivision by the City or governmental or utility entity. The Association and the lot owners agree to release, indemnify, defend and hold harmless the City, its officers, agents licensees, servants, contractors and/or employees ("Indemnitees"), from and against any and all claims or suits for property damage or loss and/or personal injury of whatever kind or character arising out of or in connection with, directly or indirectly: (a) the reasonable use of the private streets, emergency access, utility easements, entrance gate or structures by the Indemnitees;; (b) the condition of the private streets, private entrance gates or structures, private walls and fences, private pedestrian access, private storm drainage systems and emergency access; or (c) any use of the addition by the Indemnitees for any purpose stated hereinabove, whether or not cause, in whole or in part, by the alleged negligence of the Indemnitees. The Association shall be responsible for carrying liability insurance to meet the requirements of this paragraph.

11.4 Government Access. Any governmental authority or agency, including, but not limited to, the City and the County, their agents, and employees, shall have the right of immediate access to the Common Areas at all times if necessary, for the preservation of public health, safety and welfare.

11.5 Traffic Enforcement. The Association, its members and the City of Boerne agree that all traffic rules and regulations enforced and applied by the City on all public streets, alleys and rights-of-way governing the operation and movement of vehicles are hereby extended to all streets, alleys and rights-of-way within the subdivision. All such

streets, roads, alleys, and rights-of-way shall henceforth be governed and controlled by all traffic laws set forth in state law and City ordinance. a. The City may erect, place, replace, maintain and/or remove such traffic control signs, signals and devices that may be necessary or appropriate in the application and extension of traffic rules and regulations to the subdivision. If the City is so required, all costs of erection, placement, replacement, maintenance and removal shall be reimbursed by the Association to the City within thirty (30) days of such invoice. This reimbursement requirement shall include, but not be limited, to the acquisition of property for sign placement.

11.06 Conflict. In the event any conflict now or in the future, between the terms and provisions of this Article 11 and any other term or provision of this Declaration or any other document incorporated into this Declaration by reference the terms and provisions of this Article 11 shall prevail.

[signatures on following page]

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

SIENA COURT DEVELOPMENT, LLC.
A TEXAS LIMITED LIABILITY CORPORATION

STATE OF TEXAS)
CITY OF BOERNE)
AND
COUNTY OF KENDALL)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as Manager of SIENA COURT DEVELOPMENT, LLC., a Texas limited liability company, as Declarant.

WITNESS my hand and official seal.

My commission expires: _____

COMMUNITY AREA



FINAL PLAT ESTABLISHING
SIENA COURT
GARDEN HOMES



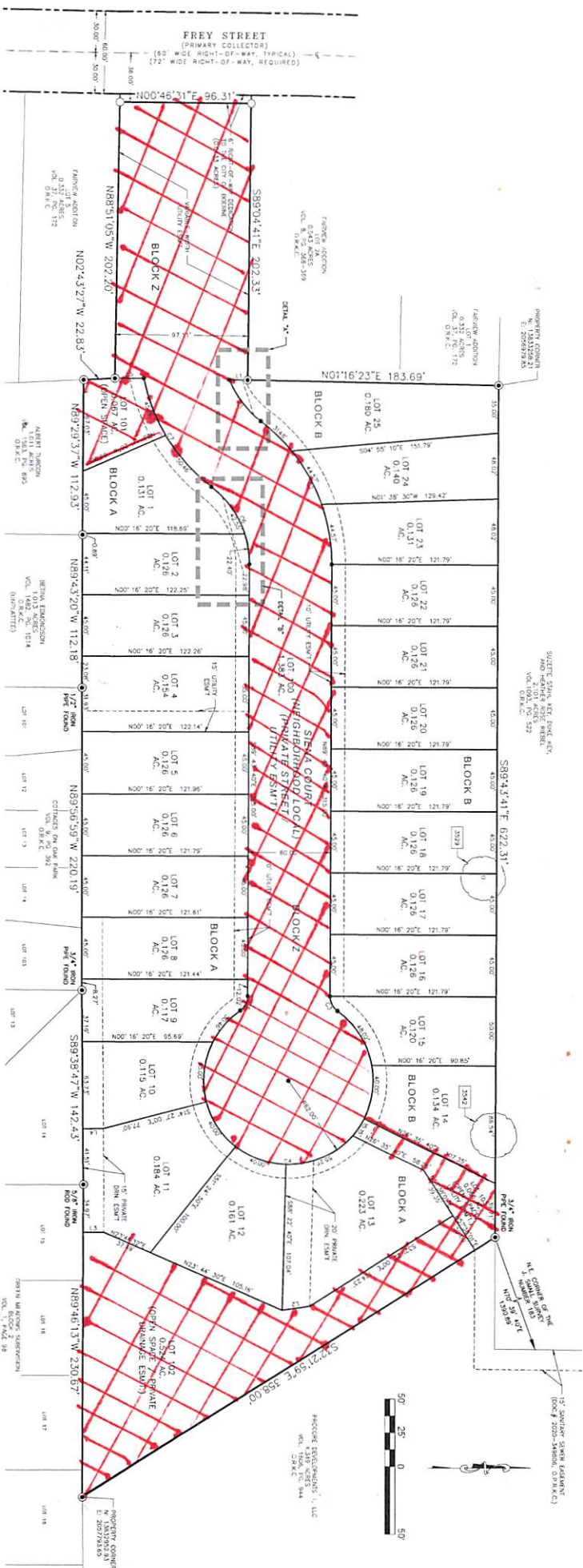
EXHIBIT C

COMMON AREAS

See Attached

A 5.468 ACRES OF LAND LYING IN THE SMALL SURVEY NUMBER 183, ABSTRACT NUMBER 441, KENDALL COUNTY, TEXAS, SAID 5.481 ACRE TRACT BEING A PORTION OF LOT 3 AND ALL OF LOT 4 OF THE FAIR VIEW ADDITION, A SUBDIVISION RECORDED IN VOLUME 37, PAGE 172, DEED RECORDS OF KENDALL COUNTY, TEXAS, ALSO BEING ALL OF THAT TRACT OF LAND DESCRIBED AS 5.48 ACRES OF LAND AS RECORDED IN VOLUME 653, PAGE 355, OFFICIAL RECORDS OF KENDALL COUNTY, TEXAS.

LINE NO.	BEARING	DISTANCE
L1	N00°6'19"E	13.26'
L2	N07°56'46"W	20.28'
L3	N00°13'44"E	15.00'
L4	S00°21'13"E	15.00'
L5	N00°6'19"E	21.29'



- NOTES
1. LOTS 100, 101, 102, AND 103 ARE HEREBY DEDICATED TO THE SIEVA COURT GARDEN HOMES HOME OWNERS ASSOCIATION.
2. LOTS 100, 101, 102, AND 103 SHALL BE MAINTAINED BY THE SIEVA COURT GARDEN HOMES HOME OWNERS ASSOCIATION.

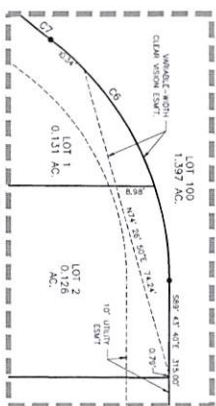
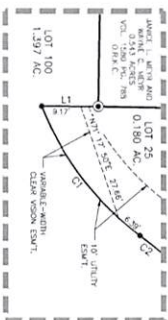


EXHIBIT D
EASEMENTS

Those easements and other rights described or created by the Plat