

# **DECLARATIONS, COVENANTS AND RESTRICTIONS**

## **Of The**

### **CHASE OAKS VILLAGE HOMEOWNER'S ASSOCIATION, INC.**

Correction to original.

**WITNESSETH:**

**WHEREAS**, Chase Oaks Village, L.P. ("**Developer**" and/or "**Declarant**") is the owner of the real property in Collin County, Texas, to be commonly known as **Chase Oaks Village**, and being 17.35 acres, more or less, per plat thereof recorded in Volume Q, Page 293, Plat Records of Collin County, Texas (the "**Property**"), and desires to create thereof a planned community, open spaces and other common facilities for the benefit of the said community; and

**WHEREAS**, Developer desires to provide for the preservation of the values and amenities in said community, for the maintenance of said open spaces and other common facilities, and to this end desires to subject the **Chase Oaks Village** to the covenants, restrictions, conditions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS**, Developer has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants, restrictions and conditions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer shall cause to be incorporated under the laws of the State of Texas, as a non-profit corporation, **Chase Oaks Village Homeowners' Association, Inc.** for the purposes of exercising the functions undertaken by the Developer until the sale of substantially all of the component townhomes within **Chase Oaks Village**; and

**NOW, THEREFORE**, Developer declares that the Property described above, and to be known as **Chase Oaks Village**, shall be subject to this **Declaration of Covenants, Conditions, and Restrictions**.

#### **ARTICLE I**

#### **DEFINITIONS**

**1.01.** The following words, when used in this Declaration or any Supplemental Declaration (unless otherwise indicated) shall have the following meanings:

(a) "**Association**" shall mean and refer to **Chase Oaks Village Homeowners' Association, Inc.**, its successors and assigns. Provided, however, that the obligations of the Association shall be performed by the Developer until the earlier of (i) the Developer ceding such obligations to the Association or (ii) the sale of 95% of the Lots to third party Owners.

(b) "**The Property**" or the "**Project**" shall mean and refer to all existing properties and additions thereto, as are subject to this Declaration or any Supplemental Declaration.

(c) "**Common Area**" shall mean and refer to those areas of land shown on any recorded subdivision plat of the property and intended to be devoted to the common use and enjoyment of the members of these Association. The designation of any land and or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein, with the exception of roads which provide for public ingress/egress and emergency access as required to promote the health, safety, welfare and enjoyment of the residents in the project.

(d) "**Lot**" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property, with the exception of Common Area as herein defined.

(e) "**Living Unit**" shall mean and refer to any portion of a building situated upon a Lot designed and intended for use and occupancy as a residence by a single family.

(f) "**Single Family Attached Structure**" shall mean and refer to any building containing two or more Living Units under one roof, where each such Living Unit is situated upon its own individual lot.

(g) "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Living Unit which is a part of The Property, including purchasers under contract from Developer, but notwithstanding any applicable theory of the

mortgage, shall not mean or refer to the mortgagees unless and until each mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(h) "**Member**" shall mean and refer to every person or entity who holds membership in the Association.

(i) "**Developer**" shall mean and refer to Chase Oaks Village, L.P., its successors and assigns.

(j) "**Building**" refers to structures in which the Living Units and certain Common Elements are located.

(k) "**Common Elements**", sometimes referred to as "Common Area", shall mean and include:

- (1) The portions of the Project which are not included within the Living Units;
  - (2) Easements through Living Units or Lots for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Living Units and the Common Elements;
  - (3) An easement of support in every portion of a Living Unit which contributes to the support of the Building;
  - (4) The property and installations required for the furnishing of utilities and other services to more than one Living Unit and/or to the Common Elements; and
  - (5) Any other parts of the Project designated as Common Elements.
- (6) It is expressly understood that windows are not Common Elements and same shall be the responsibility of the Owner of the Living Unit.

(l) "**Common Expenses**" shall mean and refer to all expenses incurred by the Association for the operation, maintenance, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by applicable statutes, this Declaration, the Articles or the Bylaws, including, but not limited to (a) all reserves required by applicable statutes or otherwise established by the Association, regardless of when reserve funds are expended; (b) the cost of all insurance that must be maintained by the Association; (c) the cost of maintenance and repair of the exterior of Buildings and landscape areas to be maintained by the Association; (d) if applicable, any and all costs, charges and other expenses relating to the provision of electronic gateway services to the Project, (e) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems; (f) the real property taxes, assessments and other maintenance expenses attributable to Living Units acquired by the Association or attributable to any Association Property; (g) any unpaid share of Common Expenses or assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; and (h) the cost of providing utility services to the Common Elements. Common Expenses shall not include any purely or totally separate obligations of an individual Living Unit Owner.

(m) The "**ACC**" shall mean and refer to the Architectural Control Committee, as described in Article VI hereof.

(n) "**Association Property**" shall mean that property, real and personal, which is owned or leased by or is dedicated by a recorded plat to the Association for the use and benefit of its Members and which is not part of the Common Elements.

(o) "**Garages**" shall mean the garages which are identified on the plans for the Project or are otherwise constructed within the Project.

## **ARTICLE II**

### **PROPERTIES SUBJECT TO THIS DECLARATION: ADDITIONS THERETO**

**2.01. Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Collin County, Texas, and is more particularly described in the opening paragraph of this Declaration.

**2.02. Maximum Number of Living Units.** Declarant reserves the right to create a maximum of 157 Living Units within the Property. However, Declarant expressly makes no representations or guarantees that it will create the maximum number of Living Units or that the Buildings or the Living Units constructed thereon (if any) will be similar to those previously constructed.

**2.03. Development.** The Living Units and the Project are part of a large-scale development, which may or may not result in construction of additional improvements by the Developer or others. **Notwithstanding anything contained herein, the Developer does not warrant in any manner whatsoever the development of the entire Project as may have been reflected in any drawings or renderings seen by Owner, shown to or otherwise received by Owner.** Further, Developer does not warrant in any manner whatsoever the development of any other

properties which are owned by the Developer or any other person or entity, whether or not in the general vicinity of the Project, and such property may be development without interference from the Owner or any grantees, personal representatives, heirs, successors or assigns of the Owner notwithstanding any plans or development schemes which may have been brought to the attention of the Owner through any public hearings, documents filed with any public entity, preliminary development plans, any public or private showings, advertisements or promotional materials or any other means whatsoever. The Owner, for itself and its grantees, personal representatives, heirs, successors and assigns, agrees that the Developer is not obligated to develop or not develop any of its properties or the surrounding properties owned by Developer or other in any manner whatsoever or to provide any service or facilities, recreational or otherwise, to the Owner, its grantees, personal representatives, heirs, successors or assigns, which may have been brought to the attention of the Owner through any proposed or preliminary development plans, except for those which the Developer is expressly obligated to develop pursuant to this Contract. Amenities as may be shown on any master plan, or revision thereof, of the Development or the large-scale development are show for planning purposes only and there is no assurance that any or all of those amenities will ever be constructed.

### **ARTICLE III** **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**3.01. Membership.** Every person or entity who is a record owner of a fee interest in any Lot shall be a member of the Association; provided that (a) any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member and (b) a person or entity holding title while constructing a residence upon a Lot with intent of reselling said house and Lot, shall not be considered a Member of the Association. Any person or entity who acquires any such fee or undivided fee interest shall be deemed to have accepted membership and assumed all obligations thereof. Each Lot shall be entitled to one vote at any meeting of the Association; the joint Owners of a Lot shall designate a representative as the person authorized to cast the vote held for such Lot.

**3.02. Indemnification.** The Association shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason or the fact that he is or was a member of the Board, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

(a) To the extent that a member of the Board, officer, employee or agent of the Association is entitled to indemnification, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

(b) Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member of the Board, officer, employee or agent of the Association to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

(c) The indemnification provided by this Amendment shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Texas, any bylaw, agreement, vote of the Members or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a person who has ceased to be a member of the Board, officer, employee or agent of the Association shall inure to the benefit of the heirs, executors and administrators of such person.

(d) The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a member of the Board, officer, employee or agent of the Association, or is or was serving at the request of the Association as a member of the Board, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

**3.03. Exculpation of the Developer, the Board, the Association, and Management Company.** The Developer, the Board and the Association may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required without liability of any nature to the Owner, Developer, Association or any other Person for any reason whatsoever, and any permission or approval granted shall be binding upon all Persons. To the extent that obligations and/or decisions are delegated by the Developer, the Board

and/or the Association to a management company, the said management company is hereby vested with the same exculpation as provided above for the Developer, Board and Association.

**3.04. Delegation to Management Company.** The Developer, Board, and/or Association may, by written management agreement, delegate responsibilities hereunder to a management company so chosen by said Developer, Board and/or Association.

#### **ARTICLE IV** **PROPERTY RIGHTS IN COMMON AREA**

**4.01. Members' Easements of Enjoyment.** Subject to these terms, conditions and provisions hereof, every Member shall have a right easement of enjoyment in and to the Common Area, including the water surface areas, and such easement shall be appurtenant and shall pass with the title to every Lot or Living Unit. In addition, any member may delegate, in accordance with the Bylaws of the Association, his right and easement of enjoyment to members of his family, his guests, his tenants, or contract purchasers who reside on the property.

**4.02. Title to Common Area.** Developer may retain the legal title or easements to the Common Area until such time as improvements have been completed and until such time as, in the opinion of the Developer, the Association is able to maintain the same, but notwithstanding any provision herein, the Developer covenants, for itself, its heirs, successors and assigns, that the Common Area shall be conveyed to the Association prior to, at the sole discretion of the Developer, or upon ninety-five percent (95%) of all Lots in The Properties being sold and Living Units constructed thereon.

**4.03. Decorative Fencing.** In addition to the other common areas defined herein, the Common Area shall include, without limitation, decorative fencing, landscaping, irrigation, common area light poles, easements and similar structures of the Property. The design and materials of construction and/or repair of the said decorative fencing, landscaping, irrigation, common area light poles, easements and similar structures of the Property shall be approved by the Architectural Control Committee ("ACC").

#### **ARTICLE V** **COVENANT FOR MAINTENANCE ASSESSMENTS**

**5.01. Creation of the Lien and Personal Obligation of Assessments.** Developer, for each Lot or Living Unit owned by Developer within the Properties, hereby covenants, and each Owner of any Lot or Living Unit by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) semi-annual assessments of charges, (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. Such semi-annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Separate semi-annual or special assessments shall be made upon each Lot or Living Unit whether or not there is more than one Living Unit per Lot.

**5.02. Purpose of Assessments.** The assessments levied by the Association shall be used, exclusively for the purposes of promoting the recreation, health, safety and welfare of the residents in the Properties, and in particular, for the improvement and maintenance of properties, services and facilities devoted to those purpose and related to the use and enjoyment of the Common Area including, but not limited to, payment of taxes and insurance thereon, and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**5.03. Basis of Semi-Annual Assessments.** Semi-annual assessments shall begin on the first due date (January 1 or July 1) following the initial conveyance of any Lot by the Developer, and the semi-annual assessment for the Owner of each Lot or Living Unit shall be prorated for ownership less than the entire semi-annual period. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment.

**5.04. Special Assessments for Capital Improvements.** In addition to the semi-annual assessments authorized by Section 5.03 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying in whole or part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 66 2/3 percent of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance setting forth the purpose of the meeting.

**5.05. Funding.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (1) semi-annual assessment of charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. Such assessments will remain effective for the full term (and extended term if applicable) of this Declaration. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell

due. The personal obligation for delinquent assessments shall not pass to the successors in title of such Owner unless expressly assumed by them; the Lot shall continue to be burdened with a lien for said assessments until paid.

**5.06. Assessments.** Subject to the terms of this Article, each Lot is hereby subject to an initial maximum assessment, for common area maintenance, in the amount of **\$ 175.00 per month or \$ 2,100.00 per annum** (until such assessment, for common area maintenance, shall be increased by the Association or Developer), for the purpose of creating a fund to be designated and known as the "maintenance fund", which maintenance charge and assessment will be paid by the Owner or Owners of each Lot in advance in monthly, quarterly, or semi-annual installments, commencing as to all Lots on which a completed Living Unit is then located on the conveyance of the first Lot to a Member and as to all other Lots as of the completion of the Living Unit thereon. The rate at which each Lot will be assessed, and whether such assessment shall be payable monthly, quarterly, or semi-annually, will be determined by the Board of Directors of the Association at least thirty (30) days in advance of each affected assessment period. Said rate may be adjusted from time to time by the Board of Directors as the needs of the Association may, in the judgment of the Directors, require. The assessment for each Lot shall be uniform except as provided in the following paragraph. The Association shall, upon written demand for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

**5.07. Living Units or Lots Owned by Declarant.** Notwithstanding the foregoing, the Declarant shall be exempt from any and all assessments, howsoever defined and specifically including, without limitation, regular assessments for common area maintenance, special assessments for capital improvements, and working capital fund.

**5.08. Purpose of Maintenance Fund.** The Association shall establish a maintenance fund composed of Owner's annual, or semi-annual, assessments for maintenance of the Common Area, and shall use the proceeds of such fund in providing for normal, recurring maintenance charges for the Common Area for the use and benefit of all members of the Association. Such uses and benefits to be provided by the Association may include, by way of clarification and not limitation, any and all of the following: normal, recurring maintenance of the Common Area (including, but not limited to, mowing, edging, watering, clipping, sweeping, pruning, raking, and otherwise caring for existing landscaping) and the improvement to such Common Area, such as sprinkler systems and common area lights, if any, provided the Association shall have no obligation (except as expressly provided hereinafter) to make capital improvements to the Common Area; payment of all legal and other expenses incurred in connection with the enforcement of all recorded covenants, restrictions, and conditions affecting the property to which the maintenance fund applies; payment of all reasonable and necessary expenses in connection with the collection and administration of policemen and watchmen, if any; caring for vacant lots; and doing any other thing or things necessary or desirable in the opinion of the Board of Directors of the Association to keep the Property neat and in good order, or which is considered of general benefit to the Owners or occupants of the Property, it being understood that the judgment of the Board of Directors in the expenditure of said funds and the determination of what constitutes normal, recurring maintenance shall be final and conclusive so long as such judgment is exercised in good faith. The Association shall, in addition, establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements of the Common Area, repair, and replacement of improvements of the Common Area. The fund shall be established and maintained out of regular annual assessments.

**5.09. Special Assessment for Working Capital Fund.** In addition to the assessments authorized above, the Association may levy special assessments as follows: Upon the sale of a Lot by Declarant, a special assessment equal to **two (2) months** estimated regular assessment may be assessed, which shall be due and payable upon conveyance of the Lot to the Owner. Such special assessment shall be available for all necessary expenditures of the Association.

**5.10. Change in Basis and Maximum of Semi-Annual Assessments.** From and after January 1 of the year immediately following the commencement of semi-annual assessments, the maximum semi-annual assessment may be increased effective January 1 of each year without a vote of the membership to the greater of (a) five [5%] percent per year, cumulative of all years that no dues increase has occurred, or (b) an amount equal to the rise if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) since the preceding July.

From and after January 1 of the year immediately following the commencement of assessments, the maximum semi-annual assessment may be increased above the amount allowed in the preceding paragraph by a vote of the Members, provided that any such change shall have the approval of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Bylaws and under the provision of this Declaration.

**5.11. Quorum for any Action under Section 5.4 through 5.10.** The Quorum for any action authorized by Section 5.4 through 5.10, inclusive, shall be as follows:

(a) At the first meeting called as provided in Sections 5.04 through 5.10 hereof, the presence at the meeting of Members or of proxies entitled to cast fifty-one percent (51%) of all the votes of each class of membership shall constitute a quorum.

(b) If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth above and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**5.12. Due Date of Assessments:** The semi-annual assessments for herein due and payable on the first day of January and the 1st day of July after the commencement date herein above set out and the due date of any special assessments under Section 5.04 hereof shall be fixed in resolution authorizing each assessment.

The Board of Directors may, at its option, change the semi-annual assessments to an annual or monthly assessment and determine the due date thereof.

**5.13. Duties of the Board of Directors.** The Board of Directors of the Association shall, upon the commencement date herein provided, prepare a roster of the Lots, and Owners, and assessments applicable thereto, which shall be kept in the office of the Association, and shall be open to inspection by any Owner. Written notice of the initial assessment and of any subsequent changes therein shall be forthwith sent to every Owner subject thereto.

The Association shall, upon request, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificate and such certificate shall be conclusively evidence of payment of any assessment therein stated to have been paid.

**5.14. Effect of Non-payment of Assessment; Personal Obligations of owner; Lien; Remedies of Association.**

(a) If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, forthwith become a continuing lien, in favor of the Association, against the Owner's Lot and Living Unit or improvements upon the Lot which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

(b) If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the lesser of the maximum legal rate under any and all applicable state and/or federal laws or the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorneys' fee to be fixed by the Court, together with costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-usage of the Common Area or abandonment of his Lot.

(c) The Association shall be entitled to record a notice of delinquent assessment and establish a lien for payment of the pro rata share of unpaid assessments owed by an Owner, which lien shall be prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record made to good faith and for value as to any Lot and Living Unit as to which the assessment is delinquent. The notice of delinquent assessment shall state the amount of the assessment which is due and payable, collection costs, attorneys' fees, late charges and interest, a description of the Lot against which the assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association.

(d) Any lien for an Assessment may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Chapter 51 of the Texas Property Code. Any sale by the trustee shall be conducted in accordance with the provisions of Chapter 51 of the Texas Property Code, including any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly, or by an assignment of such rights, against an Owner for breach of any personal obligation to pay assessments.

**5.15. Subordination of the lien to mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon The Properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any subsequent assessment.

**5.16. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments, charges and lien created herein:

- (a) All properties to the extent of any easement or any other interest therein dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Area as defined in Section 1.1, hereof.
- (c) All properties exempted from taxation by the laws of the state of Texas, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall, unless owned by Declarant, be exempt from set assessments, charges or liens.

**5.17. No Refunds of Reserves.** All funds paid to the Association shall be held, administered and expended by the Association as set forth herein. There shall be no refunds of assessments to any Owner.

## **ARTICLE VI** **ARCHITECTURAL CONTROL**

**6.01. Approval of Architectural Control Committee Required.** No trees shall be removed except by utility companies as required in furnishing of utility services, and no building, fenced wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the details, plans and specifications showing the nature, kind, shape, high, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee (“ACC”). The ACC may adopt, and amend from time to time, suggested forms and required information to be submitted to the ACC, and the time required for such submittal, in order to obtain approval from the ACC for the propose construction, addition, alternation, or change; such suggested forms, required information and required time periods shall be binding upon each Owner, Lot, and Property as if fully set forth herein.

This ACC shall be comprised solely of the Developer until ninety-five percent (95%) of all Lots in the Property have been sold and Living Units constructed thereon, at which time the ACC shall be comprised of no less than three (3) nor more than seven (7) Members, to be appointed by the Board of Directors. ACC Members may be removed for any reason, or no reason whatsoever, upon majority vote of the Board of Directors.

In the event the ACC fails to approve or disapprove any such detail, design, plan, specification or location within fifteen (15) working days after submission to it, or in any event if no suit to enjoin has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with.

**6.02. Adoption of Architecture and Landscape Guidelines.** The ACC may adopt, and amend from time to time, guidelines for proper architecture and landscape of the Lots, Living Units and Property (hereinafter the Architecture and Landscape Guidelines®). Each Lot must comply with all terms and conditions of the Architecture and Landscape Guidelines as if fully set forth at length herein. The ACC shall make such guidelines available to Owners free of charge upon Owner’s purchase of a Lot and shall make any amendments or supplements thereto available to Owners free of charge upon the adoption of such amendment or supplement. Thereafter, the Architecture and Landscape Guidelines (or amendments/supplements thereto, as the case may be) may be obtained from the ACC for a reasonable photocopy/printing charge.

## **ARTICLE VII** **RESTRICTIVE COVENANTS**

**7.01. Specific Restrictions.** Each of the specifically numbered Lots shown upon any recorded residential subdivision map of the Property (as distinguished from such land, if any, within the limits of such subdivisions which is not specifically platted and numbered as Lots) shall be impressed with the following restrictions, covenants and conditions for the purpose of carrying out a general plan of development and maintenance of the premises. The failure of any Owner to adhere to any of the following restrictions may result in (a) the cure of such default by the Association and a charge-back against the Owner for such curative measures, (b) a fine or special assessment against such Owner, or (c) both. Any such charge-back, fine, or special assessment shall be enforceable as any other assessment and therefore may be enforced by a lien in favor of the Association, non-judicial foreclosure of said lien, and court action to collect the sums due.

(a) Each residence may be occupied by only one family consisting of persons related by blood, adoption or marriage or by no more than two unrelated persons living together as a single housekeeping unit, together with any household staff.

(b) None of the Lots shall be subdivided into smaller Lots.

(c) All roofs shall be constructed of composition shingles (300 lb plus). Notwithstanding the above, roof materials and colors shall be approved by the ACC. In the event a Living Unit, or the roof thereof, is damaged or destroyed, any new roof shall be comprised of the same material as used in the original construction of the Living Unit, unless a modification thereof is granted by the ACC.

(d) No noxious or offensive act or activity shall be allowed upon any Lots, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

(e) Auto repair or infrequent scheduled maintenance performed in the garage is acceptable. However, constant or very frequent work on one or more autos is considered a health and environmental nuisance and will not be permitted.

(f) Any such vehicle or recreational equipment parked in violation of these or other regulations contained herein or in the Rules and Regulations adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twenty-four (24) consecutive hours. The Association shall not be liable to the owner of such vehicle or recreational equipment for trespass, conversion or otherwise, not guilty of any criminal act by reason of such towing and neither its removal or failure of the owner of such vehicle or recreational equipment to receive any notice of said violation shall be ground for relief of any kind. Storage of automobiles in areas other than a garage or driveway is prohibited.

Law officers or the Association may without notice remove inoperable vehicles or vehicles with expired licenses or expired inspection stickers or any old or damaged vehicle what has been parked for any extended length of time.

(g) No boat, trailer, mobile home, camper, boat trailer or similar wheeled vehicle shall be stored (except temporarily, not to exceed 24 hours) nearer to the street than the front of the Living Unit situated thereon. No house trailer, mobile home, camper, boat trailer, car or similar wheeled vehicle shall be stored or parked on any Lot except in a closed garage or driveway of the Living Unit.

(h) No sign shall be erected or maintained on any Lot except a "for sale" sign, which sign shall not exceed fifteen (15) square feet in size, or a sign owned by the Developer or by the Association. No "for lease" sign shall be erected or maintained.

(i) No radio, television or other aerial shall erected or maintained on any roof or Living Unit.

(j) A Lot or any portion of any Lot, that is exposed to the public view must be maintained by the property Owner in a neat and orderly fashion. In the event this restriction is not complied with then the Association has the right to cause the required maintenance to be performed at the expense of the Lot Owner. An assessment will be applied against the Owner, and the Association may take any and all actions in law, against the Owner to correct the situation. The assessments, together with such interest thereon and costs of collection thereof (including attorneys fees), shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the person who was the owner of such Lot at the time when the assessment occurred. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage or any renewals or extensions thereof existing prior to the assessment date.

(k) No Lot affected hereby shall be used for the dumping or storage of rubbish, trash, debris, surplus soil or rocks, etc. Owners shall keep their Lot clean, tidy and free of trash.

(l) No oil drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any Lot; nor shall oil wells, tanks, tunnels mineral excavations or shafts be permitted upon or in any Lot. No derrick or other similar structure shall be erected, maintained or permitted upon any Lot.

(m) The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping, drainage or construction of improvements thereon.

(n) All exterior sculptures, fountains, flags and like accessories on the Lots or Property are subject to approval of the Committee.

(o) Maximum height allowable top of highest ridge from main entry finish floor will not exceed 35'.

(p) The ACC recommends that each residence in the residential community shall have installed within it a combination Fire/Intrusion Alarm System and such system shall be configured so that it can be monitored by an alarm monitoring facility. The Developer has pre-wired to allow such a system to be installed. The Owner shall bear responsibility for regular testing, monitoring, and repairing said alarm system.

(q) Specifically exempted from the provisions of this section are activities by the Developer, carried out in the regular pursuit of construction, maintenance and sales within the subdivision which exemption shall end when all development activity including sales by Developer are completed.

(r) No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Properties at any time.

(s) All fencing must comply with the Architectural and Landscape Guidelines. Each Lot must have, at a minimum, a cedar-board-on-board fence along each of its side yard boundaries, being six (6') feet in height, and extending at least eight (8') feet from the rear of the Living Unit. An Owner may extend said fence along the side boundaries of the Lot to a point no closer than six (6') feet from the rear boundary line of said Lot ("Rear of Lot Fence Line"). Owner may also enclose Owner's rear yard by installation of companion fencing along the Rear of Lot Fence Line. All fencing so installed shall be cedar-board-on-board fencing, six (6') feet in height. In the event Owner encloses the rear yard of a Lot with the fencing allowed herein, Owner shall install a gate, also made of cedar-board-on-board, six (6') feet in height, and three (3') feet in width. In the event Owner encloses the rear yard of a Lot with the fencing allowed herein, Owner shall be responsible for the maintenance of Owner's yard within such fenced area, in accordance with the Landscape Guidelines, and shall be responsible for the repair and maintenance of the fence, to include keeping same in good repair and painted as necessary to maintain an attractive appearance. Owner may establish privacy screening via the use of shrubbery and other landscaping; however, Owner shall plant and maintain said shrubbery and landscaping a sufficient distance from the fence to allow the maintenance and repair of the fence. As with other requirements in this

Declaration, in the event Owner fails to adequately repair and/or maintain the fence, the Association may exercise the remedies provided in these Declarations to include, without limitation, the entry upon the Lot and performance of such repairs and/or maintenance as may be necessary, at the expense of Owner, and without liability or responsibility for damage to gate locks, landscaping, or other items which may deter or interfere with such repair or maintenance.

(t) No more than one fence shall be constructed, installed or erected along any given boundary line. Furthermore, so long as an Owner does not enclose Owner's rear yard by installing fencing along the Rear of Lot Fence Line, the Association shall maintain the rear yard of said Lot and shall maintain that side of any fencing which faces said Lot. Those Owners who choose to enclose their rear yard and therefore undertake responsibility for the maintenance of said rear yard shall not receive any discount or abatement of assessment dues.

(u) The obligation to maintain and repair any heating or air conditioning equipment, plumbing or electrical fixtures or other items of property which service a particular Living Unit or Living Units shall be the responsibility of the applicable Living Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Living Units.

(v) No Living Unit or occupant shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of the Building (including, but not limited to, awnings, signs, storm shutters, screens, planters, window tinting, furniture, fixtures and equipment), without the prior written consent of the ACC, which may be withheld by the ACC in its sole discretion for any or no reason. Christmas lights or other decorative outdoor lights shall not be mounted or affixed to the building in a manner which causes any penetration to the building, outside brick, fascia, or other portion of the building whatsoever.

(w) Garages may not be converted into living area, but shall be used only for parking and storage and shall be kept closed at all times, except as reasonably required for ingress to and egress from the interior of the garages. No Owner of any Living Unit shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Project, except wholly within that Owner's Garage; provided, however, that such activity shall at no time be permitted if it is determined by the Board to be a nuisance. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any local ordinance. No Owner shall park, store, or keep anywhere within the Project or on Association Property, any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, which shall have the authority to adopt, from time to time, such reasonable rules and regulations governing the use of the Garages and the underground and surface parking areas as it may deem necessary. Although the Association shall provide painting and maintenance of the exterior of garage doors, any damage to garage doors resulting from unreasonable, improper or excessive wear and tear shall be the financial responsibility of the Owner.

(x) The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Living Units.

(y) The Board of Directors of the Association is vested with the responsibility to adopt Rules and Regulations governing the use of Association property and the Common Areas and governing the personal conduct of members, residents and their guests. The Declaration, Articles of Incorporation, Bylaws, Rules and Regulations are the governing documents for the Association and control its, daily affairs.

(z) Each Owner shall, and does hereby, grant to the Association a right of access to his Living Unit for the purpose of (i) making inspections to correct any condition originating in the Living Unit threatening another Living Unit, the Building, and Common Elements, provided, that requests for entry shall be made in advance and that any such entry is at all time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate, whether the Owner is present at the time or not.

(aa) Garage sales, estate sales and any similar sales event is prohibited.

(bb) Satellite dishes no larger than eighteen inches in diameter are allowed, as set forth in this provision; all other satellite dishes and aerials are prohibited. Allowed satellite dishes shall not be affixed to the eifs, or any roof; said dish may be affixed to the fascia of the soffit . in a location permitted by the Association which shall not be on the face of any building. The Owner shall bear all risk and liability in the event the affixing of the satellite dish to the fascia of the soffit causes damage to the Building, leakage, or other occurrence.

(cc) The light bulbs for exterior lights shall be replaced by the Owner of the Living Unit which is vested with the electric switch controlling said light fixture.

(dd) Owners shall clean oil, rust, or other discoloring agents from such Owner's driveway.

(ee) Windows are not Common Elements. Owners shall bear the responsibility for cleaning, maintenance, repair and replacement of windows.

(ff) Any damage or destruction to any portion of the exterior of a Living Unit, the Common Areas, or any other property owned or maintained by the Association, resulting from acts or omissions which exceed normal wear and tear, shall be the financial responsibility of the Owner who caused such damage or destruction, or the Owner responsible for the guest or children who caused such damage or

destruction.

(gg) Owners shall be responsible for all personal property taxes, real property taxes, and income taxes assessed by any governmental entity upon, or in connection with, such Owner and such Owner's Lot and Living Unit. The Association shall have no liability for said taxes.

(hh) No portion of a Lot or Living Unit may be leased except in strict compliance with the Rules and Regulations for leasing, as adopted and amended from time to time by the Association. The Association shall, unless modified by the Board of Directors of the Association, require screening of the prospective tenant (credit and criminal background check), preparation of the lease by the Association, minimum and maximum terms of tenancies, payment of fees by the prospective tenant, and payment of a fee in the amount of no greater than five (5%) percent of the gross lease payments to the Association by the lessor.

(ii) As long as Developer owns or leases a townhome in the Chase Oaks Village development, Developer and its agents shall have the right to keep an office and model units in the townhome. Developer, or its successors or assignee, may erect advertising signs and do whatever else is necessary and helpful for sales.

**7.02. Lien for Enforcement.** In addition to liens for assessments, a lien may be imposed as a result of an Owner's failure to comply with the Declaration of Covenants, Conditions, and Restrictions (as amended), Bylaws, Rules and Regulations, Builders Rules and Regulations, Architectural Control Guidelines, and any other document pertaining to the Property. In addition to, and without limiting in any manner the right of the Developer (and subsequently, the Association) to collect attorney's fees from an Owner, any and all liens placed upon a Lot by the Developer (and subsequently, the Association) due to non-compliance of such Owner and/or Lot may have included therein, as a special assessment, reasonable attorney's fees for the services of counsel in obtaining enforcement of the Declaration of Covenants, Conditions, and Restrictions (as amended), Bylaws, Rules and Regulations, Builders Rules and Regulations, Architectural Control Guidelines, and any other document pertaining to the Property.

In addition to, and without limiting in any manner, the rights of enforcement vested by law and/or by the terms and conditions of the Declarations of Covenants, Conditions, and Restrictions, Bylaws, Rules and Regulations, Architectural Control Guidelines, and any other document pertaining to the Chase Oaks Village, the Developer (and subsequently the Association when ninety-five percent (95%) of all Lots in the subdivision have been sold and Living Units constructed thereon) shall have the right to enforce the Declaration of Covenants, Conditions, and Restrictions, Bylaws, Rules and Regulations, Builder's Rules and Regulations, Architectural Control Guidelines, and any other matter pertaining to the subdivision by placing a lien upon any Lot which is not in compliance with the aforesaid document after providing written notice to the Owner of such Lot substantially outlining the area or areas of non-compliance. Such lien may be foreclosed in the same manner as liens for assessments.

**7.03. No Waiver of Other Remedy.** The remedy provided in this Amendment shall not limit or waive any other rights or remedies provided by law or in other documents affecting the subdivision. Similarly, the Developer (or Association) shall have the right to pursue one or more remedies concurrently, consecutively, or otherwise. The instigation of enforcement of any one remedy shall not operate as a waiver of the Developer's (Association's) right to exercise any other remedy provided by law or by document effecting the subdivision.

**7.04. Liens Subordinated; Liens not Extinguished upon Foreclosure.** The liens provided by this Amendment shall be subordinated to the lien of any mortgage or mortgages now or hereafter placed upon a Lot or Lots made the subject of a lien provided by this Amendment; provided, however, that such subordination shall apply only to non-compliance which was performable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any non-compliance still existing after such foreclosure or thereafter becoming performable, nor from the lien for any subsequent non-compliance or a lien for continuing non-compliance.

**7.05. Imposition of Assessments for Violations.** It is acknowledged and agreed among all Owners that a violation of any of the provisions provided for in the ACC and Covenants Conditions and Restrictions documentation, by an Owner or Resident may impose irreparable harm to the other owners or Residents. All Owners agree that a special assessment not to exceed One Hundred and No/100 Dollars (\$100.00) per day may be imposed by the Developer or Association for each day a violation continues after notification by the Developer or the Association. All special assessments collected shall be used for the benefit of the Association. Any special assessment levied shall be paid within fifteen (15) days after mailing of notice of the special assessment. If not paid within said fifteen (15) days the amount of such special assessment shall accrue interest at the highest interest rate allowed by the laws of Texas.

## **ARTICLE VIII EASEMENTS RESERVED**

**8.01** No building or other permanent structure shall be erected or maintained within areas designated on any recorded plat of the Property as utility and drainage easements except as may be approved by the ACC.

**8.02** Developer reserves for the use and benefit of the Association a perpetual easement as shown on the recorded plat of the Property, and of such other additions as may hereafter be covered and included in this Declaration as supplemented for the purpose of erecting a fence of reasonable height and composition.

**8.03** All easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of the Property recorded in Records of Collin County, Texas. Right of use for ingress and egress shall be had at all times over any dedicated easement and for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement which would constitute interference with the use, maintenance, operation or installation of such utility.

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

**9.01. Duration.** The restrictions, covenants and conditions of this Declaration shall run and bind the land, and shall inure to the benefit of and be enforceable by The Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then Owners of fifty-one Percent (51%) of the Lots has been recorded, agreeing to change said restrictions, covenants and conditions in whole or in part; provided, however that no such agreement to change shall be effective unless, made and recorded one (1) year in advance of the effective date of such change and unless written notice of the proposed agreement is sent to every Owner at least thirty (30) days in advance of any action taken.

**9.02. Reserved Rights of Developer.** Notwithstanding any other provision hereof, Developer reserves the right (upon application and request of the Owner of any Lot) to waive, vary or amend (by an appropriate letter to that effect addressed and delivered to such applicant owner by Developer) the application of any of these covenants and restrictions to such Lot if, in the sole discretion of the Developer, such action may be necessary to relieve hardship or permit good architectural planning to be affected. Developer also reserves the right to re-divide and re-plat any of the Property or Lot without any notice or consent of any other Owner.

**9.03. Sales Office.** Developer may designate the location of a sales office for use in offering Lots and Living Units for sale, and for all purposes incident thereto. Said use is intended as temporary, and shall cease at such time as ninety-five percent (95%) of the Lots in all have been sold and Living Units constructed thereon.

**9.04. Invalidation and Severability.** The invalidation by any Court of any reservation, covenant and restriction herein or in any contract or deed contained shall not impair the full force and effect of any other reservation covenant or restriction.

**9.05. Acceptance of Declaration.** The provisions hereof are hereby made a part of each contract and deed in respect of any Lot to the same effect as it fully set forth therein, and each such contract and deed shall be conclusively held to be executed delivered and accepted upon and subject to the provisions and conditions herein set forth.

**9.06. Interpretation.** Developer's interpretation of the meaning and application of the provisions hereof shall be final and binding on all interested parties until title to the Common Area is delivered to the Association pursuant to Section 4.2 hereof at any time in question.

**9.07. Other Committees.** Developer may, at its sole discretion, on or prior to ninety-five percent (95%) of all Lots in The Properties having been sold and Living Units constructed thereon, appoint a committee of one or more persons to exercise any or all the discretionary rights and powers reserved herein to Developer.

**9.08. Assignment.** Developer may assign to any person or corporation any or all rights, powers, reservations, easements and privileges herein reserved by and to Developer and any such assignee shall have the same right to so assign.

**9.09. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

**9.10. Enforcement.** Enforcement of these restrictions, covenants and conditions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such restrictions, covenants and conditions, either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the Association or any Owner to enforce any restriction, covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any such actions shall be entitled to recover its reasonable attorneys' fees incurred in connection therewith. The Declarant, the Committee or an Owner shall have the right, but not the obligation, to enforce these covenants, conditions and restriction in accordance with the provisions set forth within this Declaration.

**9.11. Amendments.** Notwithstanding anything herein above, these restrictions, covenants and conditions may be amended and/or changed in part as follows: Prior to the sale of ninety-five percent (95%) of all Lots in the Property and Living Units constructed thereon, the Developer, at its sole discretion and without approval of any Owner, may amend or change this **Declaration of Covenants, Conditions, and Restrictions**.

**9.12. Rules and Regulations.** The Developer may adopt certain reasonable rules and regulations, together with sanctions for the violation thereof, to insure maintenance of the character and quality of the Property, in harmony with the guidelines set forth in this **Declaration of**

**Covenants, Conditions, and Restrictions.** From time to time, the Association may amend or vary such rules and regulations according to the Bylaws of the Association and each member by virtue of ownership of a lot in the subdivision agrees to adhere to the rules and regulations.

**9.13. Owners' Compliance.** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this **Declaration**, and shall comply with the decision and resolutions of the Committee or its duly authorized representative, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages and or for injunctive relief.

**9.14. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provision which remain in full force and effect.

## **ARTICLE X** **ARBITRATION**

**10.01. Claims to be Arbitrated.** Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this **Declaration, Covenants and Restrictions** Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the applicable rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

**10.02. Demand for Arbitration.** Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

**10.03. No Joinder.** No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement. The foregoing agreement to arbitrate shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**10.04. Judgment to Enforce Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**10.05. Deposit as Condition Precedent.** As a condition precedent to the instigation of any litigation and/or arbitration, or filing any counterclaim or third party claim, with respect to the matters made the subject of this Agreement, the claimant (however, specifically excluding [i] Developer, Declarant, their owners, partners, employees, officers, and/or directors, as well as [ii] the Association as long as it is controlled by the Developer or Declarant), prior to commencing the litigation or arbitration, or filing any counterclaim or third party claim, shall post security in the amount of Ten Thousand Dollars (\$10,000.00) with the District Clerk of the County in which such litigation or arbitration shall be conducted. The security shall be in the form of cash or a bond (to be approved by the District Clerk) and, by the terms of such security, it shall be payable to the party responding to such litigation or arbitration conditioned upon orders from the Court and or arbitration panel awarding costs and or damages to the responding party. Failure to post the security as hereby agreed upon shall serve as a basis for abatement of the litigation or arbitration and or dismissal of the litigation or arbitration without prejudice, as determined by the trial court or arbitration panel. This provision shall survive any closing or termination of this Agreement and shall govern in the event of any litigation or arbitration by and among the parties hereto which in any manner directly or indirectly has as the basis of such litigation or arbitration the subject matter of this Agreement.

**10.06. Costs.** If on account of any breach of default by an Owner in its obligations hereunder, Developer, Declarant, or the Association shall employ an attorney to present, enforce or defend any of Developer, Declarant, or the Association's rights or remedies hereunder, Owner agrees to pay any reasonable attorney's fees incurred by Developer, Declarant, or the Association in such connection. In the event it is necessary for Developer, Declarant, or the Association to enforce this Agreement or any of the terms or provisions contained herein on account of the breach or default by the Owner, the Developer, Declarant, or the Association shall be entitled to recover, in addition to all other sums provided for herein, a reasonable fee for time expended by Developer, Declarant, or the Association's principal, which fee shall be deemed as reasonable at \$200 per hour for each hour expended responding to and or asserting claims or disputes pursuant to this Agreement. In the case of litigation, the parties to this contract agree that the pre-judgment interest rate shall be 10% and the post judgment interest rate shall be 18%. Expert fees shall be reimbursable as costs incremental to the case and paid for by the non-defaulting party.

## **ARTICLE XI** **LEASING**

**11.01. Lease of Living Units Controlled by Association.** No Living Unit shall be leased except in compliance with the terms and conditions hereof.

**11.02. Application.** Any Owner who wishes to lease such Owner's Living Unit to a tenant must have the prospective tenant ("Applicant") approved by the Association prior to the signing of the lease. The lease shall be prepared by the Association, without modification except as approved by the Association in its sole discretion. Subject to the following restrictions, Owner and Applicant may agree upon the duration of the lease and the monthly rental: (a) the lease term shall be at least six (6) months and less than three (3) years, and (b) monthly rent shall be at least 90% of fair rental value, as determined by the management company in its sole discretion.

**11.03. Forms; Approval Process.** The form of application and the approval process shall be detailed in the Bylaws and Rules and Regulations adopted and modified from time to time by the Association. The approval may include criteria pertaining to income, credit history, criminal convictions, prior occupancies, civil court judgments, and such other factors as deemed reasonably necessary by the Association.

**11.04. Costs.** The Association shall require the payment of reasonable administrative fees by the tenant-applicant in order to defer the costs incurred by the Association in processing the application and conducting background checks as required. Further, the Owner shall pay to the Association a **Leasing Fee** equal to four (4%) percent of the gross rents due under the entirety of the lease term.

**11.05. Owner to Remain Primarily Responsible.** After execution of the lease, the Owner shall be responsible for enforcement of the terms and conditions thereof, including the collection of rents from the tenant. Except for approval of the Applicant and preparation of the lease, the Association shall not act on behalf of Owner or tenant to enforce the terms and conditions of the lease. The Association may enforce the rules, regulations, and other restrictions imposed upon the use and occupancy of the Living Unit and the common elements as well as the condition and appearance of the Unit and related common elements. Such enforcement may include, without limitation, the right of the Association to evict the tenant; Owner hereby granting to the Association the right, but not the obligation, to evict the tenant in the event of such tenant's non-compliance with applicable rules and regulations. An eviction of the tenant by the Association shall not create a liability of the Association to the Owner. Notwithstanding the execution of the lease and the approval of the Applicant, Owner shall remain primarily liable to the Association for the compliance of Owner's Living Unit and Owner's tenant with the rules, regulations and other restrictions imposed upon the use and occupancy of the Living Unit and the common areas, as well as the condition and appearance of the Unit and related common areas.

**11.06. Failure to Gain Approval.** In the event a Living Unit is leased without compliance with this provision, the Association may (a) require the Owner and tenant to comply with this provision and, if the tenant is approved, require the execution of an approved lease and payment of two times the Leasing Fee by Owner; (b) summarily disapprove of the tenant, in its sole and absolute discretion and require the tenant to remove him/herself from the Living Unit, the Owner hereby assigning to Association the right to evict the tenant in the event the Association so chooses; or (c) take such other remedial action as deemed appropriate.

