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THE STATE OF TEXAS |
 |
 THE COUNTY OF MIDLAND |

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
 POLO PARK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 16 day of April, 1982, by POLO PARK ASSOCIATES, a Texas General Partnership, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property (the "Subdivision") described within Exhibit "A" to this Declaration, which Exhibit "A" is by this reference incorporated herein for all purposes hereof as though it were set forth at length herein, which property represents the community unit development known as "Polo Park". Declarant desires to take advantage of the presently-existing unique geographical features of the Subdivision and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations with respect thereto in those portions of the Subdivision dedicated to residential development. In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the Subdivision and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Subdivision; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT the real property described within Exhibit "A", and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or any further Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

- (a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Common Areas and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter prescribed. The Association, as of the date of recordation of this Declaration and continuing thereafter for an indefinite period of time, exists as an unincorporated association. At a point in time deemed appropriate by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas

[under the name "Polo Park Homeowners Association, Inc." or a similar or comparable name, depending upon the then-existing availability of such corporate name(s)] for the purposes set forth herein.

(b) "Subdivision" shall mean and refer to all of the property set forth on Exhibit "A" hereto, and any additions thereto, which is subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof.

(c) "Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as common green, common areas, parks, recreational easements, boulevards, greenbelts or open spaces on any recorded subdivision plat of the Subdivision or which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. Declarant proposes to hold record title to the Common Areas, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Areas, for an indefinite period of time and at a point in time [deemed appropriate and reasonable by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration] after the Association has been incorporated, record title to the Common Areas will be transferred from the Declarant to the Association. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

(d) "Tract" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subdivision, as amended from time to time, which is designated as a lot or tract therein and which is or will be improved with a single-family residential dwelling in conformity with any building restrictions applicable thereto.

(e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Tract subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Tract as security merely for the performance of an obligation.

(f) "Member" shall mean and refer to an Owner of a Tract.

(g) "Declarant" shall mean and refer to Polo Park Associates, a Texas General Partnership, and its successors and assigns, if any. No person or entity merely by purchasing one or more Tracts from Polo Park Associates, a Texas General Partnership or its successors and assigns in the ordinary course of its business shall be considered to be "Declarant".

ARTICLE II.

ADDITIONS TO SUBDIVISION SUBJECT
TO THIS DECLARATION

Subdivision. Additional land may become subject to this Declaration in any of the following manners, to-wit:

(a) The Declarant may add or annex additional real property [from time to time and at any time] to the scheme of this Declaration by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concepts and purposes of this Declaration;

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation proposal must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association;

(c) Any additions made pursuant to Paragraphs (a) and (b) of this Article II., when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added and correspondingly subject the properties added to the Covenants and Restrictions contained in this Declaration or any Supplementary Declaration thereto; and

(d) Upon a merger or consolidation of the Association (as an incorporated entity) 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 or consolidated association may administer the covenants and restrictions established by this Declaration for the Subdivision together with the covenants and restrictions established upon any other properties as one scheme.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1. Membership. Every Owner of a Tract shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing.

Section 3.2. Voting Rights. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Tract Owners other than Class B Members. Class A Members shall be entitled to one (1) vote for each Tract in which they hold the interest required for membership. When more than one person

holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Tract.

CLASS B: Class B Members shall consist of the Declarant and Tract Owners who are engaged in the process of constructing a residential dwelling on their respective Tracts for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one (1) vote for each Tract owned. The Declarant alone, however, shall be entitled to six (6) votes for each Tract it owns or in which it has a lien interest. The Class B Membership shall cease, and each Class B Member shall become a Class A Member:

(i) when the total number of votes outstanding in the Class A membership is eight (8) times greater than the total number of votes outstanding in the Class B membership; or

(ii) on the tenth (10th) anniversary date of the lawful commencement date of the Association as an incorporated entity,

whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article X. hereinafter, until:

(a) The Declarant no longer owns:

(i) record title to any Tract; and

(ii) a lien interest in any Tract, and

(iii) title to any adjoining acreage intended to be developed as an additional section or phase of Polo Park; or

(b) The tenth (10th) anniversary of the recording date for this Declaration,

whichever occurs first in time, neither the Association nor the Members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which shall not be unreasonably withheld or delayed.

Section 3.3. Quorum, Notice and Voting Requirements.

(a) Subject to the provisions of Sections 3.2, 4.3, 6.4 and 10.4 hereof, as well as Paragraph (c) of this Section, any action upon which the Members shall be required to vote shall require the assent of the majority of the Members of the Association voting in person or by proxy with respect to each matter requiring a vote of each Member at a meeting duly called for such purposes, written notice of which shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose or purposes of such meeting.

(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

At the first meeting called, the presence at the meeting of Members, or of legitimate proxies, entitled

to cast sixty percent (60%) of all of the votes of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, an additional meeting or meetings may be called for the same purposes of such first meeting, subject to the notice requirement hereinabove set forth, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting; provided, however, that no such subsequent meeting shall be held more than ninety (90) days following the first meeting.

(c) As an alternative to the procedure set forth above, but subject to the provisions of Section 2 above, any action referred to in Paragraph (a) of this Section may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

(d) Except as specifically set forth in Paragraph (a) above or elsewhere in this Declaration:

(i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and

(ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, as the same may be amended from time to time.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON AREAS

Section 4.1. Members' Easements of Enjoyment. Subject to the provisions of Section 4.3. hereof, every Member and each individual who resides with a Member in a residence located on a Tract shall have a right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title of each respective Tract, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alterations, additions or improvements to the Common Areas. Such easements shall be limited to Members. No Member shall permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinances or which would result in the cancellation or increase of any insurance carried by the Association or which would result in the violation of any law or any rule or regulation promulgated by the Board. Any such violation will subject the Member perpetrating such violation to the Special Individual Assessment pursuant to Article VI. hereof. No alcoholic beverages may be sold on the Common Areas, but Members will be entitled to carry alcoholic beverages onto the Common Areas for their own consumption.

Section 4.2. Title to the Common Properties. The Declarant will hold record title to the Common Areas for an indefinite period of time, subject to Article I Paragraph (c) hereof and subject to the easements set forth in Section 4.1. above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Midland) to encumber, mortgage, alter, improve, landscape and maintain the

Common Areas, provided that Declarant fully and timely complies with any and all requirements of the City of Midland. The Association (as an unincorporated entity) will not hold title to any of the Common Areas and no Member or Owner will have a direct or undivided ownership interest in the Common Areas. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

Section 4.3. Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant (during the time the Association is unincorporated) or the Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Areas by the Members. The Board shall have the powers set forth in Section 5.2. of Article V with respect to enforcement of such rules and regulations. A Member who shall be determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

(b) Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the Declarant to develop and improve the Common Areas or by the Association (as an incorporated entity) to improve or maintain the Common Areas;

(c) The right of the Association to enter into and execute contracts with any party (including, without limitation, the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment against a Tract resided upon by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the then-existing rules and regulations; and

(f) Subject to approval by written consent by the Members holding or controlling 60% or more of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

ARTICLE V.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1 Powers and Duties With Respect To Assessments. The affairs of the Association, whether it is existing as an incorporated or unincorporated entity, shall be

conducted by its Board of Directors ("the Board"). The Board, for the benefit of the Association, the Common Areas and the Owners shall provide for and shall pay for out of a fund maintained by it and made up of the Maintenance Assessments, the Special Assessments and the Individual Assessments provided for in Article VI. hereof, the following expenses associated with and related to the Common Areas:

(a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of all personal property located in, on and/or affixed to the Common Areas;

(b) Establishment, installation and maintenance of a security system for the safety and protection of the Owners and residents of the Subdivision;

(c) Charges for taxes, insurance and utilities (including, but not limited to electricity, gas, water and sewer charges) which pertain to and are related to the Common Areas only;

(d) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by any manager hired by the Board pursuant hereto;

(e) Legal and accounting services;

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 5.2. Other Powers and Duties. The Board shall have the following additional rights, powers and duties:

(1) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by it as an incorporated entity;

(2) To enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Tracts and utility companies with respect to:

(a) any taxes or insurance coverage on the Common Areas; and

(b) utility installation, consumption and service matters;

(3) to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(4) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operations and management of the Association;

(5) To protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(6) To make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time;

(7) Subsequent to incorporation, to make available to each Owner within ninety (90) days after the end of each year an annual report;

(8) To obtain insurance and use its proceeds in accordance with Article VII. hereof;

(9) To enforce the provisions of this Declaration and any rules made hereunder, to seek damages from any Owner for violation of such provisions or rules and to enjoin any Owner from perpetrating any such violation.

Section 5.3. Liability Limitations. None of (i) the Declarant, (ii) the Association, (iii) the Directors of the Association, (iv) the officers of the Association, (v) the agents of the Association or (vi) the employees of the Association shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof located in the Subdivision or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof located in the Subdivision, nor shall any director on the Board be liable to any Member for the performance and discharge of his duties as director on the Board.

Section 5.4. Reserve Funds. The Board may, in its sole and absolute discretion, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order better to demonstrate (if deemed appropriate or necessary) that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE VI.

Section 6.1. Covenant and Lien for Assessments. The Declarant for each Tract owned by it hereby covenants, and each Owner of a Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant, and agrees to pay to the Association: (1) regular assessments or charges (the "Maintenance Assessments") discussed at greater length hereinafter; (2) special assessments for capital improvements, or unusual or emergency matters (the "Special Assessments") such assessments to be fixed, established and collected from time to time as hereinafter provided, and (3) individual special assessments (the "Individual Assessments") levied against individual Tract Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of an individual Owner or the residents of the Tract owned by him. All

of such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Maintenance Assessments, Special Assessments and Individual Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land covered by this Declaration and shall be a continuing lien upon each Tract against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Tract at the time when the assessment fell due.

Section 6.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes: (i) of promoting the health, recreation, safety and welfare of the residents of the Subdivision, (ii) for carrying out the duties of the Board as set forth in Article V. hereof, (iii) for carrying out the various matters set forth or envisioned herein or in any Supplementary Declaration related hereto which are to be accomplished or overseen by the Association, and (iv) for payment of expenses incurred by the Association connected with any matter or thing designated by the City of Midland in connection with zoning, subdivision, platting, building or development requirements.

Section 6.3. Basis and Amount of Maintenance Assessments.

A. From and after the original date of commencement of Maintenance Assessments (when established by the Board) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the minimum Maintenance Assessment shall be \$10.00 per condominium, \$10.00 per townhouse, and \$10.00 per single family residence (other than condominiums and townhouses), provided such Assessment shall be reasonable in relationship to the amounts needed by the Association for ordinary maintenance.

B. From and after January 1 of the year immediately following the conveyance of the first Tract from Developer to an Owner, the Board may establish the maximum Maintenance Assessment for each Tract, provided that the maximum Maintenance Assessment may not be increased more than 25% above the maximum Maintenance Assessment for the previous year unless such an increase is approved by the Owners as provided in Section 3.3. hereof.

C. The Board may subsequently fix the actual Maintenance Assessment at an amount equal to or less than the maximum Maintenance Assessment.

Section 6.4. Special Assessment for Capital Improvements. In addition to the Maintenance Assessments authorized above, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of the vote of not less than two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting of the Association duly called for this purpose.

Section 6.5. Rate of Assessments. Both Maintenance and Special Assessments must be fixed at a uniform rate for all units within each class of residence or housing owned by the Owners (which classes consist of single-family residences, townhouses and condominiums) unless otherwise approved by the Board.

Section 6.6. Date of Commencement of Assessments; Due Dates. The regular assessments provided for herein shall commence on the date fixed by the Board to be the initial date of commencement. The Board may prescribe from time to time that the Maintenance Assessments are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board shall prescribe the appropriate due dates. All Maintenance Assessments or proportionate parts thereof shall be collected in advance. The due date or dates of any Special Assessment or Individual Assessment under Sections 6.3. and 6.4. hereof, shall be fixed in the resolution authorizing such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Maintenance Assessments, the Owner shall be entitled to annual notice thereof only. In addition, in the case of Maintenance Assessments, the written notice prescribed herein shall provide whether such assessments are to be collected on an annual, semi-annual, quarterly or monthly basis.

Section 6.7. Duties of the Board Regarding Collection of Assessments.

A. The Board shall maintain a roster of the Tracts, the assessments applicable to each, the due date of each of such assessments, and whether any of such assessments is in default, which roster shall be kept in the office of the Association.

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

Section 6.8. Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law plus reasonable attorney's fees, become a debt secured by a self-executing lien on the Tract or Tracts of the non-paying Owner and may be enforced in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law.

ARTICLE VII.

INSURANCE, REPAIR AND RESTORATION

Section 7.1. Right to Purchase Insurance. The Board shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Subdivision or Common Areas, any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the agents and employees of the Association, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location, and use to the subject property. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Areas.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 7.2. Insurance Proceeds. The Board shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Board as part of a general reserve fund for repair and replacement of the Common Areas.

Section 7.3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a special capital improvement assessment as provided for in Article VI. of this Declaration to cover the deficiency without the necessity of obtaining the approval of the Members of the Association with respect thereto.

ARTICLE VIII.

USE OF LOTS AND PROPERTIES - PROTECTIVE COVENANTS

The Subdivision (and each Tract situated therein) shall be constructed, developed, occupied and used as follows:

Section 8.1. Residential Lots. All Tracts within the Subdivision shall be used, known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any Tract other than a single-family dwelling and, if any, customary and usual accessory structures. No building or structure intended for or adapted to business purposes, with the exception of any apartment complex or complexes constructed in the Subdivision by Declarant or with the consent of Declarant, shall be erected, placed, permitted or maintained in the Subdivision, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or of the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Subdivision, other than the business engaged in by the apartment complex or apartment complexes.

Section 8.2. Architectural Control Committee. At such time as fifty percent (50%) of all of the Tracts have been sold by Declarant, then the Architectural Control Committee shall come into existence and the provisions hereinafter pertaining to its operation shall be applicable to the remaining Tracts. The Architectural Control Committee, hereinafter called "the Committee", shall be composed of three (3) individuals or business entities selected and appointed by Declarant, each generally

familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Subdivision. The Committee shall function as the representative of the Owners of the Tracts for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision.

In the event of the death or resignation of any member of the Committee, the Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to the Declaration.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Tract until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

- (i) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iii) location with respect to topography and finished grade elevation and effect of location and use of neighboring Tracts and improvements situated thereon;
- (iv) drainage arrangement; and
- (v) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Tract Owners or the general value of the Subdivision.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Tract Owner or his designated representative. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disap-

proval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of their submission, then such plans shall be submitted to the Board. If the Board fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of such plans by the Committee and Association shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference.

ARTICLE IX.

EASEMENTS

Section 9.1. Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Subdivision are reserved by Declarant for itself, its successors and assigns and all utility companies serving the Subdivision. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Subdivision 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 that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 9.2. Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times to, from, over and upon the Common Areas for the purpose of the carrying out by the Association of its functions, duties and obligations hereunder.

ARTICLE X.

GENERAL PROVISIONS

Section 10.1. Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as their true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within the Declaration, or any part hereof, with such clause(s), recital(s),

covenant(s), agreement(s), and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing;

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

(d) The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 10.2. Rezoning and Development. For a period of fifteen (15) years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object, challenge, dispute, obstruct, hinder or in any manner disagree with the Declarant's proposed or actual development (including without limitation zoning rezoning, platting or replatting efforts or processes pertaining to apartments, condominiums, shopping centers, office buildings or retail uses) of any real property within a one (1) mile radius of all or any portion of the Subdivision.

Section 10.3. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date that this Declaration, is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent (95%) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolition.

Section 10.4. Amendments. Notwithstanding Section 10.3. hereof, these Covenants and Restrictions may be amended and/or changed in part provided that approval of the City of Midland as to each of such changes shall be obtained before such changes shall be effective. Such changes and amendments shall be obtained in accordance with the platting procedure of the City of Midland as follows:

(a) during the two (2) year period immediately following the date of recordation of the Declaration, the Declarant may amend or change those Covenants and Restrictions and shall not be required to obtain the consent of the Association or the Members thereof to any such change or amendment;

(b) during the eight (8) year period immediately following the end of the two (2) year period set forth in subparagraph (a) immediately above, the Declarant may amend or change these Covenants and Restrictions with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association; and

(c) from and after the tenth (10th) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of the Association.

Any and all amendments shall be recorded in the office of the County Clerk of Midland County, Texas.

Section 10.5. Enforcement. Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of Midland, Texas, is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys fees from the non-prevailing party.

Section 10.6. Validity. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on or against any Tract. Invalidation of any one or more of these Covenants and Restrictions, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Midland, then such municipal requirement shall control.

Section 10.7. Headings, Gender and Number. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 10.8. Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.9. Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification.

Section 10.10. Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board, whose determination shall be final, binding and conclusive upon all Owners and other interested parties.

IN WITNESS WHEREOF, POLO PARK ASSOCIATES, a Texas General Partnership, being the Declarant herein, has caused this Declaration to be executed this 16th day of April, 1982.

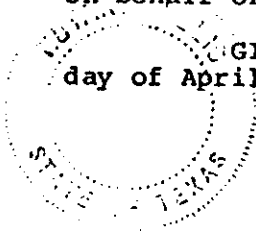
POLO PARK ASSOCIATES, A Texas General Partnership

By: Scott R. Steenson
SCOTT R. STEENSON, Partner

THE STATE OF TEXAS |
COUNTY OF MIDLAND |

This instrument was acknowledged before me on
this 16th day of April, 1982, by SCOTT R. STEENSON, partner
on behalf of POLO PARK ASSOCIATES, A Texas General Partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 16th
day of April, 1982.



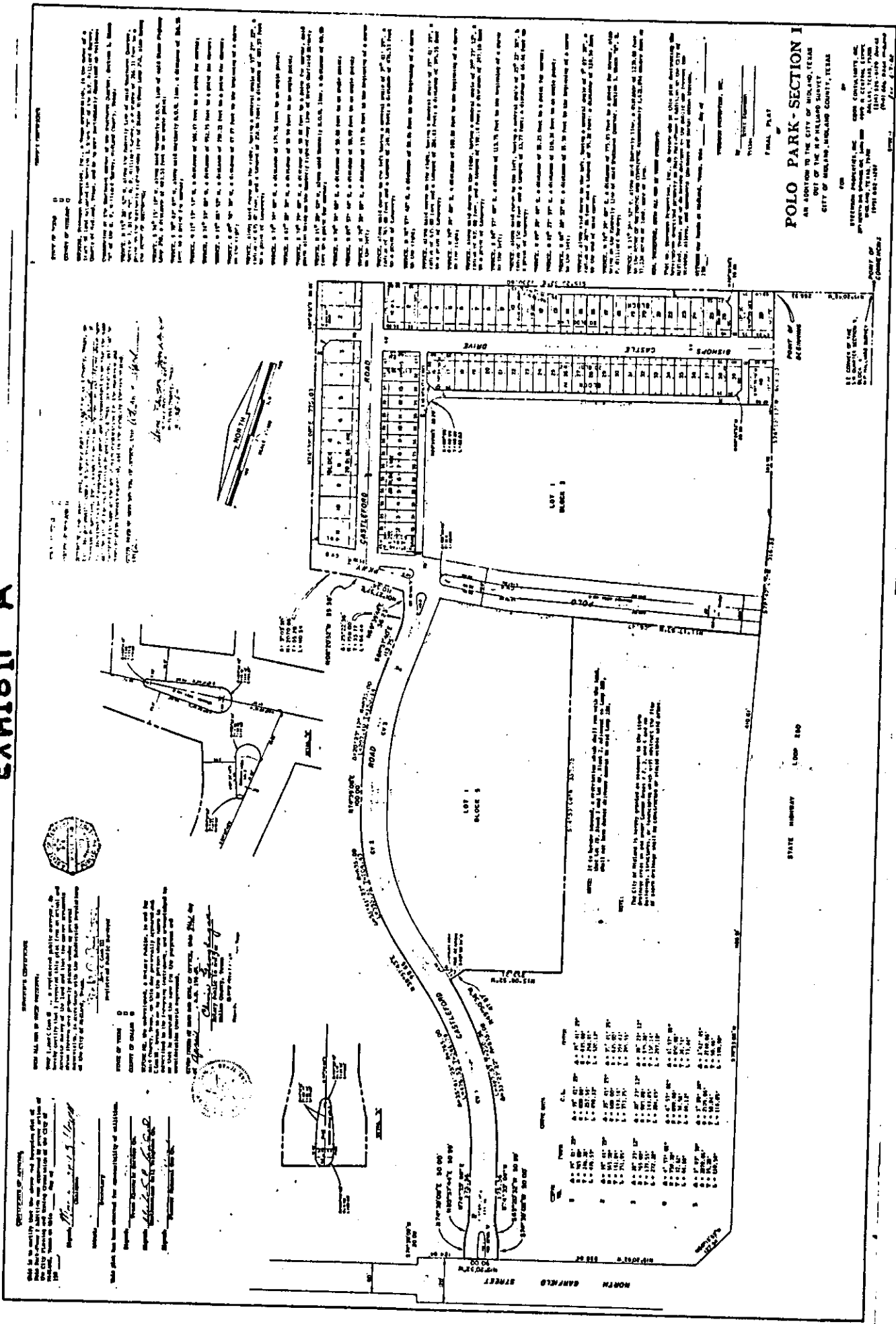
Anne Lawson
NOTARY PUBLIC in and for
The State of Texas

PRINT NAME: ANNE LAWSON

My Commission Expires:

3-25-84

EXHIBIT "A"



Filed for Record on the 10 day of May A.D. 1982, at 3:40 o'clock PM.
Duly Recorded this the 11 day of May A.D. 1982, at 9:04 o'clock AM.
ROSENEILLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS
By Deputy Clerk, Deputy

INSTRUMENT NO. 11057

2655

SUPPLEMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
POLO PARK

THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Polo Park is made this 26 of January, 1983, by POLO PARK ASSOCIATES, a Texas General Partnership, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant reserved the right in Article II, Subparagraph (a), of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park dated and executed April 16, 1982 (hereinafter referred to as the "Declaration"), which is by this reference incorporated herein for all purposes hereof as though it were set forth at length herein and is filed of record in the appropriate records of the County of Midland, Texas, to file of record a Supplemental Declaration of Covenants, Conditions and Restrictions which shall extend the scheme and scope of the covenants, conditions and restrictions of said Declaration to property subsequently annexed to the Polo Park Subdivision, and

WHEREAS, Declarant has annexed certain property to the Polo Park Subdivision which is to be subject to said Declaration, which property is sometimes known as "Polo Park Subdivision, Section 2,"

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT the common area in said Polo Park, Section 2, sometimes known as "Common Area No. 5," in the records relating to subdivisions maintained by the City of Midland, will, in accordance with and subject to all of the covenants, conditions and restrictions contained in said Declaration applicable to common areas, be reserved for and ultimately used as a club house, together with swimming pool and one tennis court, with immediately adjacent paved parking area and that the ten foot wide access easement from Richmond Court (as set forth on the plat of said subdivision) to said Common Area No. 5 shall be utilized for pedestrian ingress and egress to and from said Common Area No. 5.

As herein supplemented, said Declaration is restated and republished in full.

IN WITNESS WHEREOF, Polo Park Associates, a Texas General Partnership, being the Declarant herein, has caused this Declaration to be executed this 26 day of January, 1983.

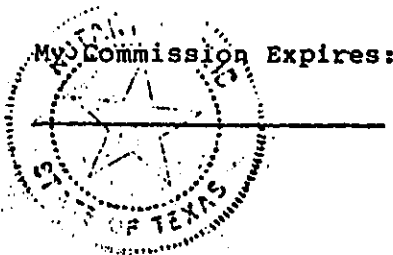
POLO PARK ASSOCIATES, A Texas
General Partnership

By: Scott R. Steenson
Scott R. Steenson, Partner

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 26
day of January, 1983, by SCOTT R. STEENSON, Partner of Polo Park
Associates, a Texas General Partnership, on behalf of said
partnership.

Alan H. Mayers
Notary Public, State of Texas
Print Name: _____



Alan H. Mayers
Notary Public in and for
the State of Texas
My Commission Expires: 7/6/85

2

Filed for Record on the 9 day of February A.D. 1983, at 4:20 o'clock P. M.
Duly Recorded this the 10 day of February A.D. 1983, at 8:15 o'clock a. M.

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

INSTRUMENT NO. 2665

By Lauren Bee, Deputy

14326

720/599

THE STATE OF TEXAS §
 §
 THE COUNTY OF MIDLAND §

AMENDMENT AND RESTATEMENT OF
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
 POLO PARK

The undersigned, Polo Park Associates, a Texas General Partnership, denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park which Declaration is dated April 16, 1982 and is of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, desires to make substantial changes in the terms and provisions thereof, and considers a complete restatement thereof to be the most expedient method or manner in which to accomplish its purposes.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates, a Texas General Partnership, does hereby change and amend the same by amending various provisions thereof, by deleting certain provisions thereof, by adding certain new provisions thereto, including the incorporation of the pertinent portions of that certain Supplement to Declaration of Covenants, Conditions and Restrictions for Polo Park, dated January 26, 1983, and executed by Polo Park Association, a Texas General Partnership, and by restating said Declaration, as so changed, supplemented and amended, in its entirety, which restatement is as follows:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 16 day of April 1982, by POLO PARK ASSOCIATES, a Texas General Partnership, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property described within Exhibit "A" to this Declaration, which Exhibit "A" is by this reference incorporated herein for all purposes hereof as though it were set forth at length herein, which real property represents the community unit development known as "Polo Park." Declarant desires to take advantage of the presently-existing unique geographical features of the said real property and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations with respect thereto in those portions of said real property dedicated to residential development (which portions shall hereinafter in the aggregate be referred to as the "Subdivision"). In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the Subdivision and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT the property situated in the Subdivision which is described within Exhibit "A", and such additions thereto as may hereafter be made

pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or any further Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

(a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Common Areas and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter prescribed. The Association, as of the date of recordation of this Declaration and continuing thereafter for an indefinite period of time, exists as an unincorporated association. At a point in time deemed appropriate by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas (under the name "Polo Park Homeowners Association, Inc." or a similar or comparable name, depending upon the then-existing availability of such corporate name(s)) for the purposes set forth herein.

(b) "Subdivision" in addition to its meaning as previously defined herein, shall mean and refer to any additions to such residential real property, which is or are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof.

(c) "Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as common green, common areas, parks, recreational easements, boulevards, greenbelts or open spaces on any recorded subdivision plat of the Subdivision or which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. Specifically, the Common Area in Section Two of the Subdivision, sometimes known as "Common Area No. 5," in the records relating to subdivisions maintained by the City of Midland, Texas, will, in accordance with and subject to all of the covenants, conditions and restrictions contained herein which are applicable to Common Areas, be reserved for and ultimately occupied by a clubhouse, together with swimming pool and one tennis court, with immediately adjacent paved parking area. Pedestrian ingress and egress to and from said Common Area No. 5 shall be by means of that certain ten-foot wide access easement from Devonshire Court (as set forth on the plat of the Subdivision) to said Common Area No. 5. Declarant proposes to hold record title to the Common Areas, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common

Areas, for an infinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration) after the Association has been incorporated, record title to the Common Areas will be transferred from the Declarant to the Association. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

(d) "Tract" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subdivision, as amended from time to time, which is designated as a lot or tract therein and which is or will be improved with a single-family residential dwelling (which term includes detached single family residences, townhouses and condominium units) or duplex in conformity with any building restrictions applicable thereto.

(e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Tract subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Tract as security merely for the performance of an obligation.

(f) "Member" shall mean and refer to an Owner of a Tract.

(g) "Declarant" as previously defined herein, shall mean and refer to Polo Park Associates, a Texas General Partnership, and its successors and assigns, if any. No person or entity, merely by purchasing one or more Tracts from Polo Park Associates, a Texas General Partnership, or its successors and assigns in the ordinary course of its business shall be considered to be "Declarant."

ARTICLE II.

ADDITIONS TO SUBDIVISION SUBJECT TO THIS DECLARATION

Subdivision. Additional land may become subject to this Declaration in any of the following manners, to-wit:

(a) Declarant may add or annex additional real property (from time to time and at any time) to the scheme of this Declaration by filing of record in Midland County, Texas a Supplemental Declaration of Covenants, Conditions and Restrictions or other amendatory document which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that any such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concepts and purposes of this Declaration;

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation proposal must have the prior written consent and

approval of the majority of the outstanding votes within each voting class of the Association;

(c) Any additions made pursuant to paragraphs (a) and (b) of this Article II, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association and the Architectural Control Committee to the properties added and correspondingly subject the properties added to the Covenants and Restrictions contained in this Declaration or any Supplementary Declaration thereto; and

(d) Upon a merger or consolidation of the Association (as an incorporated entity) 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 such a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration for the Subdivision together with the covenants and restrictions established upon any other properties over which it would then have jurisdiction as one scheme.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1 - Membership. Every Owner of a Tract shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing.

Section 3.2 - Voting Rights. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Tract Owners other than Class B Members. Class A Members shall be entitled to one (1) vote for each Tract in which they hold the interest required for membership. When more than one person holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Tract.

CLASS B: Class B Members shall consist of the Declarant and Tract Owners who are engaged in the process of constructing residential dwellings on their respective Tracts for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one (1) vote for each Tract owned. The Declarant alone, however, shall be entitled to six (6) votes for each Tract it owns or in which it owns a lien of whatever kind or character. The Class B Membership shall cease, and each Class B Member shall become a Class A Member:

(i) when the total number of votes outstanding in the Class A Membership is eight (8) times greater than the total number of votes outstanding in the Class B Membership; or

(ii) on the tenth (10th) anniversary date of the lawful commencement date of the Association as an incorporated entity,

whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article X hereinafter, until:

(a) The Declarant no longer owns:

(i) record title to any Tract; and

(ii) a lien interest in any Tract; and

(iii) title to any adjoining acreage intended by Declarant to be developed as an additional section or phase of the Subdivision; or

(b) The tenth (10th) anniversary of the recording date for this Declaration,

whichever occurs first in time, neither the Association nor the Members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which consent shall not be unreasonably withheld or delayed.

Section 3.3 - Quorum Notice and Voting Requirements.

(a) Subject to the provisions of Sections 3.2, 4.3, 6.4 and 10.4 hereof, as well as paragraph (c) of this Section, any action upon which the Members shall be required to vote shall require the assent of the majority of the Members of the Association voting in person or by proxy with respect to each matter requiring a vote of each Member at a meeting duly called for such purposes, written notice of which shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose or purposes of such meeting.

(b) The quorum required for any action referred to in paragraph (a) of this Section shall be as follows:

At the first meeting called, the presence at the meeting of Members, or of legitimate proxies, entitled to cast sixty percent (60%) of all of the votes of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, an additional meeting or meetings may be called for the same purposes of such first meeting, subject to the notice requirement hereinabove set forth, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting; provided, however, that no such subsequent meeting shall be held more than ninety (90) days following the first meeting.

(c) As an alternative to the procedure set forth above, but subject to the provisions of Section 3.2 above, any action referred to in paragraph (a) of this Section 3.3 may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

(d) Except as specifically set forth in paragraph (a) of this Section 3.3 or elsewhere in this Declaration:

(i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and

(ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, as the same may be amended from time to time.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON AREAS

Section 4.1 - Members' Easements of Enjoyment. Subject to the provisions of Section 4.3 hereof, every Member and each individual who resides with a Member in a residence located on a Tract shall have a right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to each respective Tract, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alterations, additions or improvements to the Common Areas. Such easements shall be limited to Members and individuals who reside with Members in a residence located on a Tract. No Member shall do anything or permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or increase in any insurance carried by the Association or which would result in the violation of any law or any rule or regulation promulgated by the Board. Any such violation will subject the Member or individual residing with him who perpetrates such violation to the Special Individual Assessment pursuant to Article VI hereof. No alcoholic beverages may be sold on the Common Areas, but Members will be entitled to carry alcoholic beverages onto the Common Areas for their own consumption.

Section 4.2 - Title to the Common Properties. The Declarant will hold record title to the Common Areas for an indefinite period of time, subject to Article I paragraph (c) hereof, and subject to the easements set forth in Section 4.1 above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Midland) to encumber, mortgage, alter, improve, landscape and maintain the Common Areas, provided that Declarant fully and timely complies with any and all requirements of the City of Midland with respect thereto. The Association (as an unincorporated entity) will not hold title to any of the Common Areas and no Member or Owner will have a direct or undivided ownership interest in the Common Areas.

Section 4.3 - Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant (during the time the Association is unincorporated) or the Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Areas by the Members. The Board shall have the powers set forth in Section 5.2 of Article V with respect to enforce-

ment of such rules and regulations. A Member who shall be determined by the Board or by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees;

(b) Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the Declarant to develop and improve the Common Areas or by the Association (as an incorporated entity) to improve or maintain the Common Areas;

(c) The right of the Declarant or the Association to enter into and execute contracts with any party (including, without limitation, the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment against a Tract resided upon by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the then-existing rules and regulations for use of the Common Areas; and

(f) Subject to approval by written consent by the Members holding or controlling 60% or more of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

ARTICLE V.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1 - Powers and Duties with Respect to Assessments. The affairs of the Association, whether it is existing as an incorporated or unincorporated entity, shall be conducted by its Board of Directors ("the Board"). The Board, for the benefit of the Association, the Common Areas and the Owners shall provide for and shall pay for out of a fund maintained by it and made up of the Maintenance Assessments, the Special Assessments and the Individual Assessments provided for in Article VI hereof, the following expenses associated with and related to the Common Areas:

(a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of all personal property located in, on and/or affixed to the Common Areas;

(b) Establishment, installation and maintenance of an integrated security system for the safety and protection of the Owners and residents of the Subdivision;

(c) Charges for taxes, insurance and utilities (including, but not limited to electricity, gas, water and sewer charges) which pertain to and are related to the Common Areas only;

(d) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by any manager hired by the Board pursuant hereto;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 5.2 - Other Powers and Duties. The Board shall have the following additional rights, powers and duties:

(a) to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association as an incorporated entity;

(b) to enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Tracts, utility companies and companies maintaining security in the Subdivision with respect to:

(i) any taxes or insurance coverage on the Common Areas;

(ii) utility installation, consumption and service matters; and

(iii) installation, maintenance and operation of security systems;

(c) to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(d) to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operations and management of the Association;

(e) to protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(f) to make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time;

(g)-- subsequent to incorporation, to make available to each Owner within ninety (90) days after the end of each year an annual report of the operations of the Association;

(h) to obtain insurance and use its proceeds in accordance with Article VII hereof; and

(i) to enforce the provisions of this Declaration and any rules made hereunder, and in connection therewith, to seek damages from any Owner for violation of such provisions or rules and to enjoin any Owner from perpetrating any such violation.

Section 5.3 - Liability Limitations. None of (i) the Declarant, its agents or employees or (ii) the Association, its directors, its officers, its agents or its employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof located in the Subdivision or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation who shall make such repairs or effect such maintenance shall not be liable for any damage or injury to either person or property or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof located in the Subdivision, nor shall any director on the Board be liable to any Member for the performance and discharge of his duties as director on the Board.

Section 5.4 - Reserve Funds. The Board may, in its sole and absolute discretion, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order better to demonstrate (if deemed appropriate or necessary by the Board) that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE VI

Section 6.1 - Covenant and Lien for Assessments. The Declarant, for each Tract owned by it hereby covenants, and each Owner of a Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association: (1) regular assessments or charges (the "Maintenance Assessments") discussed at greater length hereinafter; (2) special assessments for capital improvements, or unusual or emergency matters (the "Special Assessments") such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments (the "Individual Assessments") which shall be levied against individual Tract Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of an individual Owner or the residents of the Tract owned by him. All of such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Maintenance Assessments, Special Assessments and Individual Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the real property covered by this Declaration and shall be a continuing lien upon each Tract against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Tract at the time when the assessment fell due.

Section 6.2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes: (i) of promoting the health, recreation, safety and welfare of the residents of the Subdivision, (ii) for carrying out the duties of the Board as set forth in Article V hereof, (iii) for carrying out the various matters set forth or envisioned herein or in any Supplementary Declaration related hereto which are to be accomplished or overseen by the Association, and (iv) for payment of expenses incurred by the Association in connection with zoning, subdivision, platting, building or development requirements of the City of Midland which impact the Subdivision.

Section 6.3 - Basis and Amount of Maintenance Assessments.

A. From and after the original date of commencement of Maintenance Assessments (when established by the Board) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the minimum Maintenance Assessment shall be \$10.00 per condominium, \$10.00 per townhouse, \$10.00 per duplex and \$10.00 per single family residence (other than condominiums and townhouses), provided such Assessment shall be reasonable in relationship to the amounts needed by the Association to cover its costs for ordinary maintenance.

B. From and after January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the Board may establish for each calendar year thereafter the maximum Maintenance Assessment for each Tract, provided that the maximum Maintenance Assessment for any year may not be increased more than 25% above the maximum Maintenance Assessment for the calendar year previous thereto unless such an increase is approved by the Owners as provided in Section 3.3 hereof.

C. The Board may subsequently fix the actual Maintenance Assessment at an amount equal to or less than the maximum Maintenance Assessment.

Section 6.4 - Special Assessment for Capital Improvements. In addition to the Maintenance Assessments authorized above, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of the vote of not less than two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting of the Association duly called for this purpose.

Section 6.5 - Individual Assessments. In addition to the Maintenance Assessments and the Special Assessments authorized above, the Association may levy an Individual Assessment against a Tract, the Owner of which, through his willful or negligent acts or omissions or those of the other residents of the dwelling on such Tract, shall cause the Association to incur extra costs for repairs and maintenance. Such Individual Assessment shall be for the amount of such extra costs and shall only be levied (a) after the Owner of the Tract is given 10 days written notice by the Association of his obligation to the Association for such

extra costs and (b) after such Owner fails to pay such obligation within such 10 day period. The Association may levy an Individual Assessment against the same Owner for as many episodes or events as such Owner shall be responsible for that cause the Association to incur such extra costs.

Section 6.6 - Rate of Assessments. Both Maintenance and Special Assessments must be fixed at a uniform rate for all units within each class of residence or housing owned by the Owners (which classes consist of detached single-family residences, townhouses, condominiums and duplexes) unless otherwise approved by the Board.

Section 6.7 - Date of Commencement of Assessments;
Due Dates. The Maintenance Assessments shall commence to be levied on the date fixed by the Board for such commencement. The Board may prescribe from time to time that the Maintenance Assessments are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board shall prescribe the appropriate due dates. All Maintenance Assessments or proportionate parts thereof shall be collected in advance. The due date or dates of any Special Assessment or Individual Assessment under Sections 6.3 and 6.4 hereof, shall be fixed in the resolution authorizing such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the types of assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Maintenance Assessments, the Owner shall be entitled to annual notice thereof only. In addition, in the case of Maintenance Assessments, the written notice prescribed herein shall provide whether such assessments are to be collected on an annual, semi-annual, quarterly or monthly basis.

Section 6.8 - Duties of the Board Regarding Collection of Assessments.

A. The Board shall maintain a roster of the Tracts, the assessments applicable to each, the due date of each of such assessments, and whether any of such assessments is in default, which roster shall be kept in the office of the Association.

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

Section 6.9 - Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law (which shall be the "indicated rate ceiling" within the meaning of Article 5069-1.04, Texas Revised Civil Statutes) plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 hereof on the Tract or Tracts of the non-paying Owner and may be enforced at or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

ARTICLE VII

INSURANCE, REPAIR AND RESTORATION

Section 7.1 - Right to Purchase Insurance. The Board shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Subdivision or Common Areas, any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the agents, officers and employees of the Association, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location, and use to the property subject to such insurance. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Areas.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 7.2 - Insurance Proceeds. The Board shall use the net insurance proceeds to repair and replace any damage to or destruction of property, real or personal, covered by such insurance. Any balance for the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion or repair and replacement, shall be retained by the Board as part of a general reserve fund for repair and replacement of the Common Areas.

Section 7.3 - Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a Special Assessment as provided for in Article VI of the Declaration to cover the deficiency without the necessity of obtaining the approval of the Members of the Association with respect thereto.

ARTICLE VIII

USE OF LOTS AND PROPERTIES - PROTECTIVE COVENANTS

The Subdivision (and each Tract situated therein) shall be constructed, developed, occupied and used as follows:

Section 8.1 - Residential Lots. All Tracts within the Subdivision shall be used, known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any Tract other than a single-family dwelling (including detached single family residences, condominiums and townhouses) or duplex with, if any, customary and usual structures accessory thereto. Each condominium shall be deemed to be situated on its own separate Tract. No building or struc-

ture intended for or adapted to business purposes, with the exception of any apartment complex or complexes constructed in the Subdivision by Declarant or with the consent of Declarant, shall be erected, placed, permitted or maintained in the Subdivision, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Subdivision, other than the business engaged in by any such apartment complex or apartment complexes.

Section 8.2 - Condominiums and Duplexes. Rules relating to the density of condominium units in the Subdivision as well as their minimum livable floor spaces shall be prescribed from time to time by the Committee, in its sole discretion. Each one-story duplex constructed in the Subdivision shall contain a minimum of 1,100 square feet of livable floor space, exclusive of garage, patio or similar spaces, per side, and each two story duplex constructed in the Subdivision shall contain a minimum of 1,500 square feet of livable space, exclusive of garage, patio or similar spaces, per side.

Section 8.3 - Architectural Control Committee. Prior to the construction of improvements on any Tract in the Subdivision, there shall be an Architectural Control Committee, herein for convenience of reference from time to time called "the Committee," which shall be composed of three (3) individuals or business entities selected and appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the concern of Declarant for a high level of taste and design standards within the Subdivision. The Committee shall function as the representative of the Owners of the Tracts for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision.

In the event of the death or resignation of any member of the Committee, the Declarant shall have full authority to designate and appoint a successor to such member of the Committee. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to the Declaration.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Tract until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

- (i) quality of workmanship and materials; adequacy of site dimensions; adequacy of structural design; proper facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iii) location with respect to topography and finished grade elevation and effect of location on use of neighboring Tracts and improvements situated thereon;

(iv) drainage arrangements; and

(v) the other standards set forth within this Declaration (and any amendments or supplements hereto or restatements hereof) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Tract Owners or the general value of the Subdivision.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Tract Owner or his designated representative. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of their submission, then such plans shall be submitted to the Board. If the Board fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of such plans by the Committee and Association shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference.

Section 8.4 - Specific Use Restrictions. The following restrictions as to the use of each Tract in the Subdivision shall be applicable to each and every type of residence which is authorized by the terms hereof to be constructed, unless otherwise noted, with the exception of any apartment complex or apartment complexes constructed in the Subdivision:

(a) Each dwelling shall have attached to it an enclosed garage of the same construction and exterior finish as the rest of the dwelling; provided, however, that duplexes shall have a garage meeting the specifications hereof on each side. Garages must open to the rear of the

Tract unless a specific variation of this use restriction is approved in writing and in advance by the Committee. Each garage shall contain sufficient space to house two conventional automobiles. A porto-cochere may be constructed on a Tract but only in addition to a garage meeting the requirements hereof and only with the advance written approval of the Committee with respect thereto.

(b) The types of residences which may be constructed on Tracts in the Subdivision but which may not exceed two stories in height consist of detached single family residences, townhouses, condominium units and duplexes. If the Tract upon which the residence is to be built is less than 60 feet in width, then any single family residence constructed thereon other than a condominium or duplex must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,500 square feet of such livable space if one story and 1,800 square feet of such livable space if two stories. If the Tract upon which the residence is to be built is 60 feet or wider in width, then any single family residence constructed thereon other than a condominium or duplex must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,800 square feet of such livable space if one story and 2,200 square feet of such livable space if two stories, of which not less than 1,450 square feet of such space must be contained in the ground floor. The requirements for livable floor space for duplexes are set forth in Section 8.2 hereof.

(c) All residences constructed on Tracts in the Subdivision shall be of no less than seventy-five percent (75%) brick veneer in their entirety and such brick veneer shall extend from grade level to the eave or roof line of the residence. Any such residence must have a roof of wood shake shingles. The roof pitch of any structure on a Tract in the Subdivision shall be six feet by twelve feet minimum and twelve feet by twelve feet maximum. The Committee shall have the authority to vary the restrictions contained in this paragraph if and only if, (i) any proposed variations are submitted to it in advance of the commencement of construction of improvements with the proposed variations and (ii) the Committee shall issue its written authorization thereof in advance of the commencement of construction of improvements with the proposed variations.

(d) Except as herein specifically provided, no building, garage, wall or fence shall extend beyond the minimum building lines or setback lines shown upon the plat of the Subdivision, for the front, rear and side yards and no such wall shall be more than 8 feet in height unless otherwise provided hereinafter. Walls along Zero Side Lines, as hereinafter defined, shall extend to rear Tract lines, and the minimum rear building lines or rear setback lines shall not apply to such walls. Fences or walls may also extend to side Tract lines subject to the provisions hereinafter contained. Walls along or within a side setback line may extend to the rear Tract line. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback or building line and the rear Tract line may be an extension of such wall.

(e) Dwellings may be constructed in the Subdivision without regard to one of the side setback lines on the Tract in accordance with the plat of the Subdivision. Such Tract lines are hereinafter called Zero Side Lines. Each Tract having a Zero Side Line is hereinafter called a Zero Side Line Tract. It is intended that the improvements to be placed upon each Tract having a Zero Side Line will be such as to afford privacy to the Tract immediately adjoining the Zero Side Line (hereinafter called the "Adjoining Tract"). The following provisions shall apply to such Zero Side Line, the Zero Side Line Tract and the Adjoining Tracts:

(1) The Owner of a Zero Side Line Tract shall, at the time of constructing a residence upon such Tract, construct a masonry wall not less than seven (7) feet tall nor more than eight (8) feet tall along the entire Zero Side Line from the front setback line of the Tract to the rear Tract line. To the extent that such wall constitutes all or any part of a wall of the residence or garage upon the Tract, it may be two (2) stories in height. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback line and the rear Tract Line may be an extension of such wall, but no other part of such residence or garage shall extend beyond such rear setback line. If the Owner of a Zero Side Line Tract shall desire to place an eave along the Zero Side Line such Owner shall set back part or all of such wall to the extent necessary to accommodate such eave so that it does not encroach upon the Adjoining Tract by extending over the said Zero Side Line. Such wall, regardless of its height, shall be without windows, doors, or other openings, and shall be of solid design so as completely to avoid visibility through any part thereof.

(2) Should an Owner of a Zero Side Line Tract wish to have doors or windows of the residence on such Tract facing the Adjoining Tract, which are not part of the wall on the Zero Side Line, each such window or door shall be set back from the Zero Side Line a minimum distance of eight (8) feet and each such window or door, in its entirety, shall be lower than the top of the wall along the Zero Side Line.

(3) The Owner of each Zero Side Line Tract shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon his Tract (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Tract. Guttering may not encroach into the Adjoining Tract more than six inches.

(4) Eaves of any structure upon a Zero Side Line Tract may not extend over such Zero Side Line into the Adjoining Tract, but guttering attached to eaves or fascia board may extend six inches into the Adjoining Tract.

(5) If the Owner of a Zero Side Line Tract shall set back from the Zero Side Line part or all of the wall along such Zero Side Line pursuant to the provisions contained in subparagraph (1) above, the Owner of the Adjoining Tract shall have an easement upon that portion of such Zero Side Line Tract which lies between the wall and the Zero Side Line for the purposes of planting and using and enjoying said area, and the Owner of the Zero Side Line Tract shall not be entitled

to the use and enjoyment thereof except for the purpose of building, maintaining, repairing and replacing any of the structures along the Zero Side Line.

(6) The Owner of such Zero Side Line Tract is hereby granted an easement upon the Adjoining Tract upon a strip of land six (6) feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any of the Owner's structures along the Zero Side Line. Eaves on the Adjoining Tract may overhang not more than two (2) feet into such easement and shall not be less than eight (8) feet from the ground. The Owner of the Adjoining Tract will have the right to use and enjoy the area subject to such easement and shall maintain such area. The Zero Side Line Tract Owner will be liable to the Adjoining Tract Owner for any damage to the Adjoining Tract (and to the land covered by the easement, if any, under subparagraph (5) above) caused by the use of such easement. The Adjoining Tract Owner may construct a brick fence or a fence of material approved in advance by the Committee perpendicular to and extending to the neighboring Zero Side Line or to the wall as it may be set back under the provisions of subparagraph (1), but any such fence shall have a gate with an easily removable section not less than four (4) feet wide so that the Zero Side Line Tract Owner will have access to this easement.

(7) The provisions herein contained for Zero Side Lines shall in no way be construed so as to allow detached single-family dwellings to be built on adjacent Tracts without observance of the side yard required to be between them by the Zoning Ordinances of the City of Midland.

(f) No Tract shall be resubdivided in any fashion.

(g) Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Subdivision.

(h) No noxious or offensive activities shall be carried on upon any Tract, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood in which such Tract is located.

(i) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage or other out-building shall be used on any Tract at any time as a residence, either temporarily or permanently.

(j) No signs of any kind or character shall be allowed on any Tract except one sign of not more than five square feet advertising the property upon which it is located for sale or rent; provided, however, the Declarant and any other person or entity engaged in the construction or sale of residences within the Subdivision shall have the right to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas and model units.

(k) No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on a Tract, nor shall oil wells, tanks,

tunnels, mineral excavations or shafts be permitted on any Tract. No derrick or other structure designed for use in drilling for oil, natural gas or other minerals shall be erected, maintained or permitted on any Tract; provided, however, that the temporary use of a rig on a Tract for the purpose of drilling for underground water by a licensed water driller only shall be permitted if written, advance approval is obtained with respect to such utilization of any such rig from the Association.

(l) Garbage and trash storage facilities shall be screened by an adequate brick wall or fence in a manner acceptable to the Association. No Tract shall be used or maintained as a dumping ground for rubbish, trash or other waste material. In addition, during such time as there shall be construction on a Tract, the Owner of such Tract shall see to it that such Tract and the area surrounding it are kept reasonably clean and free of debris.

(m) No animal, livestock or poultry of any kind shall be raised, bred or kept on any Tract except that dogs, cats or other household pets may be kept on a Tract; provided, however, that such pets may not be kept for any commercial purpose.

(n) No fence, wall, screen, hedge, tree, shrub or structure shall be erected, planted or maintained in such a position as to in any way obstruct the view so as to constitute a traffic hazard as determined by the Committee and/or the Association.

(o) Gas meters shall be set near the alley in the rear or side of a residence unless any such meter is of an underground type which must be approved in writing and in advance by the Committee.

(p) No truck, bus, trailer or recreational vehicle shall be left parked in the street in front of any Tract except during such time as construction and repair equipment are needed to be placed on a Tract while a residence or residences are being built or repaired in the immediate vicinity thereof and no truck, bus, boat or trailer shall be parked on the driveway or any portion of a Tract in such a way as to be visible from the street in front of a Tract.

(q) No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract unless such activity shall be designed to accomplish the sale of the Tract.

(r) Construction of new buildings only shall be permitted in the Subdivision, it being the intent of this restrictive covenant to prohibit the moving of any existing building onto a Tract and remodeling or converting same into a residence in the Subdivision.

(s) Anything herein to the contrary notwithstanding, garden and screening walls may be constructed between the front property line and the front building set-back line, provided they are not in excess of four feet in height and are of materials approved in writing and in advance by the Committee. No part of a wall (1) between the rear set-back line and the rear Tract line, or (2) between the side set-back line and the side Tract line shall be over eight feet tall.

(t) Each owner of a Zero Side Line Tract, shall, after laying out a residence on a Tract, but prior to pouring a foundation thereon, shall engage a licensed civil engineer who shall prepare a certificate to be presented to the Committee stating that the construction laid out on the Tract meets all Zero Side Line and set-back line requirements of these Covenants and Restrictions or of the City of Midland, or both.

(u) No more than one residence may be constructed upon one Tract and no front yard of a residence in its entirety may be composed of concrete or cement, it being the intent hereof that all front yards of residences in the Subdivision shall contain grass or ground cover and other foliage in order to heighten the aesthetic attractiveness of the Subdivision. In order to effectuate such intent, all front yards of Tracts in the Subdivision shall have and are hereby required to have underground sprinkler systems in accordance with the minimum specifications with respect to such systems to be provided by the Committee.

(v) No individual water supply system (other than water supplied by a water well drilled in accordance with Section 8.4(k) hereof) or sewage disposal system shall be permitted on any Tract.

(w) At the time of construction of a residence on a Tract, a sidewalk must be built along the full street frontage of the Tract abutting the street curb in accordance with specifications to be provided by the Committee.

(x) No garage, servant house or out-building shall be occupied by the Owner, tenant of the Owner or anyone else prior to the construction of a residence on a Tract.

(y) No air-conditioning apparatus shall be installed on the ground in front of any residence on a Tract. No form of air-conditioning apparatus shall be attached to the front wall or side wall of a residence on a Tract other than compressor units for central air-conditioning systems. In the event a compressor is placed in the side yard of any Tract, such compressor must be located behind the front building line, but in no instance shall such compressor be located further toward the front property line of a Tract than the front wall of the residence. Any evaporative cooler installed on a Tract in the Subdivision shall not be visible from the street.

(z) Each Owner shall maintain all improvements upon his Tract in good condition and appearance, consistent with the high quality provided for herein as construed, defined and applied by the Committee and the Association. The maintenance of any screening walls or fences erected by the Declarant shall be the responsibility of the Owner or Owners of Tracts immediately adjacent thereto.

(aa) The Owner of a Tract shall have six (6) months from the date of closing of the purchase by him of such Tract in which to initiate and diligently pursue to completion physical construction of a residence thereon. In the event of the failure by any Owner to engage in such construction within such time, Declarant shall have the irrevocable option to purchase said Tract from said Owner at the purchase price for which said Owner originally purchased the Tract. Declarant shall exercise such irrevocable right and option by providing any such Owner with written notice of its intent to exercise such option in accordance with the notice provisions contained in Section 10.8 hereof.

Declarant shall have sixty (60) days from the expiration of six month period in which to exercise such right and option or such right and option shall become void and terminate sixty (60) days after the end of said six month ownership period by any such Owner. Notwithstanding the above, the Board may, in its sole discretion, approve variances of this restriction.

(bb) No residence shall be constructed in the Subdivision without installation of a basic minimum security device, the specifications for which must be obtained from the Committee. Said security devices shall be part of a Subdivision-wide, integrated security system. The Committee shall not approve the plans and specifications of any Owner of a Tract for construction of a residence without plans for such basic minimum security device being contained therein.

ARTICLE IX

EASEMENTS

Section 9.1 - Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Subdivision are reserved by Declarant for itself, its successors and assigns, the Association and all utility companies and security companies serving the Subdivision. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Subdivision 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 that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 9.2 - Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times to, from, over and upon the Common Areas for the purpose of the carrying out by the Association of its functions, duties and obligations hereunder.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 - Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as his or her true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as

Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 10.2 - Rezoning and Development. For a period of fifteen (15) years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object to, challenge, dispute, obstruct, hinder or in any manner disagree with Declarant's or Declarant's successors and assigns proposed or actual development (including without limitation, zoning, rezoning, platting or replatting efforts or processes pertaining to apartments, condominiums, shopping centers, office buildings or retail uses) or any real property within a one (1) mile radius of all or any portion of the Subdivision, as it may be added to or increased in accordance with Article II of this Declaration.

Section 10.3 - Duration. The Covenants and Restrictions of this Declaration shall run with the land and bind the Subdivision, and shall inure to the benefit of and be enforceable by the Association, the Committee and/or the Owner of any Tract subject to this Declaration, their respective legal representatives, heirs, successors, and assigns (to the extent assignment is permitted them by the terms hereof), for a term of fifty (50) years from the date that this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent (95%) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolition.

Section 10.4 - Amendments. Notwithstanding Section 10.3 hereof, these Covenants and Restrictions may be amended and/or changed in part provided that approval of the City of Midland as to each of such changes shall be obtained before any such changes shall be effective. Such changes and amendments shall be obtained in accordance with the platting procedure of the City of Midland as follows:

(a) during the two (2) year period immediately following the date of recordation of the Declaration, the Declarant may amend or change those Covenants and Restrictions and shall not be required to obtain the consent of the

Association or the Members thereof to any such change or amendment;

(b) during the eight (8) year period immediately following the end of the two (2) year period set forth in subparagraph (a) immediately above, the Declarant may amend or change these Covenants and Restrictions with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association; and

(c) from and after the tenth (10th) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of the Association.

Any and all amendments to these Covenants and Restrictions shall be recorded in the office of the County Clerk of Midland County, Texas.

Section 10.5 - Enforcement. Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is injunctive in nature or for recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association, the Committee or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of its right to do so thereafter. The City of Midland, Texas, is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party. Notwithstanding any of the above, if at any time, an Owner of a Tract shall fail to control weeds, unsightly growth and/or debris on such Tract, Declarant or the Association shall have the right to enter upon such Tract and take whatever steps deemed necessary by Declarant or the Association to clean the Tract to Declarant's or the Association's reasonable satisfaction and to bring an Individual Assessment against said Tract in accordance with Section 6.1 hereof, collectible in accordance with Article VI hereof.

Section 10.6 - Validity and Severability. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on or against any Tract. Invalidation of any one or more of these Covenants and Restrictions, or any portion thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Midland, then such municipal ordinance or regulation shall control.

Section 10.7 - Headings, Gender and Number. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 10.8 - Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.9 - Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by its respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, the correct name and address of such mortgage holder(s) and a request from such mortgage holder(s) to receive such notification.

Section 10.10 - Disputes. Matters of dispute or disagreement between Owners or between Owners and the Committee, or between Owners and the Association or between the Committee and the Association with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board, whose determination with respect to any such dispute shall be final, binding and conclusive upon all interested parties.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, POLO PARK ASSOCIATES, a Texas General Partnership, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended and completely restated.

WITNESS THE EXECUTION HEREOF this 19TH day of JULY, 1983, but effective for all purposes as of April 16, 1982.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: Scott R. Steenson
Scott R. Steenson, Partner

DECLARANT

[2:170 4-18-86]

THE STATE OF TEXAS §
 §
 THE COUNTY OF MIDLAND §

AMENDMENT AND RESTATEMENT OF
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
 POLO PARK

The undersigned, Polo Park Associates, a Texas General Partnership, denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park which Declaration is dated April 16, 1982 and is of record in Vol. 780, Page 119 of the Deed Records of Midland County, Texas, desires to make substantial changes in the terms and provisions thereof, and considers a complete restatement thereof to be the most expedient method or manner in which to accomplish its purposes.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates, a Texas General Partnership, does hereby change and amend the same by amending various provisions thereof, by deleting certain provisions thereof, by adding certain new provisions thereto, including the incorporation of the pertinent portions of that certain Supplement to Declaration of Covenants, Conditions and Restrictions for Polo Park, dated January 26, 1983, and executed by Polo Park Association, a Texas General Partnership, and by restating said Declaration, as so changed, supplemented and amended, in its entirety, which restatement is as follows:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 16 day of April 1982, by POLO PARK ASSOCIATES, a Texas General Partnership, (hereinafter referred to as "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property described within Exhibit "A" to this Declaration, which Exhibit "A" is by this reference incorporated herein for all purposes hereof as though it were set forth at length herein, which real property represents the community unit development known as "Polo Park." Declarant desires to take advantage of the presently-existing unique geographical features of the said real property and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations with respect thereto in those portions of said real property dedicated to residential development (which portions shall hereinafter in the aggregate be referred to as the "Subdivision"). In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the Subdivision and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT the property situated in the Subdivision which is described within Exhibit "A", and such additions thereto as may hereafter be made

pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or any further Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

(a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Common Areas and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter prescribed. The Association, as of the date of recordation of this Declaration and continuing thereafter for an indefinite period of time, exists as an unincorporated association. At a point in time deemed appropriate by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas (under the name "Polo Park Homeowners Association, Inc." or a similar or comparable name, depending upon the then-existing availability of such corporate name(s)) for the purposes set forth herein.

(b) "Subdivision" in addition to its meaning as previously defined herein, shall mean and refer to any additions to such residential real property, which is or are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof.

(c) "Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as common green, common areas, parks, recreational easements, boulevards, greenbelts or open spaces on any recorded subdivision plat of the Subdivision or which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. Specifically, the Common Area in Section Two of the Subdivision, sometimes known as "Common Area No. 5," in the records relating to subdivisions maintained by the City of Midland, Texas, will, in accordance with and subject to all of the covenants, conditions and restrictions contained herein which are applicable to Common Areas, be reserved for and ultimately occupied by a clubhouse, together with swimming pool and one tennis court, with immediately adjacent paved parking area. Pedestrian ingress and egress to and from said Common Area No. 5 shall be by means of that certain ten-foot wide access easement from Devonshire Court (as set forth on the plat of the Subdivision) to said Common Area No. 5. Declarant proposes to hold record title to the Common Areas, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common

Areas, for an infinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration) after the Association has been incorporated, record title to the Common Areas will be transferred from the Declarant to the Association. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

(d) "Tract" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subdivision, as amended from time to time, which is designated as a lot or tract therein and which is or will be improved with a single-family residential dwelling (which term includes detached single family residences, townhouses and condominium units) or duplex in conformity with any building restrictions applicable thereto.

(e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Tract subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Tract as security merely for the performance of an obligation.

(f) "Member" shall mean and refer to an Owner of a Tract.

(g) "Declarant" as previously defined herein, shall mean and refer to Polo Park Associates, a Texas General Partnership, and its successors and assigns, if any. No person or entity, merely by purchasing one or more Tracts from Polo Park Associates, a Texas General Partnership, or its successors and assigns in the ordinary course of its business shall be considered to be "Declarant."

ARTICLE II.

ADDITIONS TO SUBDIVISION SUBJECT TO THIS DECLARATION

Subdivision. Additional land may become subject to this Declaration in any of the following manners, to-wit:

(a) Declarant may add or annex additional real property (from time to time and at any time) to the scheme of this Declaration by filing of record in Midland County, Texas a Supplemental Declaration of Covenants, Conditions and Restrictions or other amendatory document which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that any such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concepts and purposes of this Declaration;

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation proposal must have the prior written consent and

approval of the majority of the outstanding votes within each voting class of the Association;

(c) Any additions made pursuant to paragraphs (a) and (b) of this Article II, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association and the Architectural Control Committee to the properties added and correspondingly subject the properties added to the Covenants and Restrictions contained in this Declaration or any Supplementary Declaration thereto; and

(d) Upon a merger or consolidation of the Association (as an incorporated entity) 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 such a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration for the Subdivision together with the covenants and restrictions established upon any other properties over which it would then have jurisdiction as one scheme.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1 - Membership. Every Owner of a Tract shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing.

Section 3.2 - Voting Rights. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Tract Owners other than Class B Members. Class A Members shall be entitled to one (1) vote for each Tract in which they hold the interest required for membership. When more than one person holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Tract.

CLASS B: Class B Members shall consist of the Declarant and Tract Owners who are engaged in the process of constructing residential dwellings on their respective Tracts for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one (1) vote for each Tract owned. The Declarant alone, however, shall be entitled to six (6) votes for each Tract it owns or in which it owns a lien of whatever kind or character. The Class B Membership shall cease, and each Class B Member shall become a Class A Member:

(1) when the total number of votes outstanding in the Class A Membership is eight (8) times greater than the total number of votes outstanding in the Class B Membership; or

(ii) on the tenth (10th) anniversary date of the lawful commencement date of the Association as an incorporated entity,

whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article X hereinafter, until:

(a) The Declarant no longer owns:

(i) record title to any Tract; and

(ii) a lien interest in any Tract; and

(iii) title to any adjoining acreage intended by Declarant to be developed as an additional section or phase of the Subdivision; or

(b) The tenth (10th) anniversary of the recording date for this Declaration,

whichever occurs first in time, neither the Association nor the Members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which consent shall not be unreasonably withheld or delayed.

Section 3.3 - Quorum Notice and Voting Requirements.

(a) Subject to the provisions of Sections 3.2, 4.3, 6.4 and 10.4 hereof, as well as paragraph (c) of this Section, any action upon which the Members shall be required to vote shall require the assent of the majority of the Members of the Association voting in person or by proxy with respect to each matter requiring a vote of each Member at a meeting duly called for such purposes, written notice of which shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose or purposes of such meeting.

(b) The quorum required for any action referred to in paragraph (a) of this Section shall be as follows:

At the first meeting called, the presence at the meeting of Members, or of legitimate proxies, entitled to cast sixty percent (60%) of all of the votes of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, an additional meeting or meetings may be called for the same purposes of such first meeting, subject to the notice requirement hereinabove set forth, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting; provided, however, that no such subsequent meeting shall be held more than ninety (90) days following the first meeting.

(c) As an alternative to the procedure set forth above, but subject to the provisions of Section 3.2 above, any action referred to in paragraph (a) of this Section 3.3 may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

(d) Except as specifically set forth in paragraph (a) of this Section 3.3 or elsewhere in this Declaration:

(i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and

(ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, as the same may be amended from time to time.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON AREAS

Section 4.1 - Members' Easements of Enjoyment. Subject to the provisions of Section 4.3 hereof, every Member and each individual who resides with a Member in a residence located on a Tract shall have a right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to each respective Tract, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alterations, additions or improvements to the Common Areas. Such easements shall be limited to Members and individuals who reside with Members in a residence located on a Tract. No Member shall do anything or permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or increase in any insurance carried by the Association or which would result in the violation of any law or any rule or regulation promulgated by the Board. Any such violation will subject the Member or individual residing with him who perpetrates such violation to the Special Individual Assessment pursuant to Article VI hereof. No alcoholic beverages may be sold on the Common Areas, but Members will be entitled to carry alcoholic beverages onto the Common Areas for their own consumption.

Section 4.2 - Title to the Common Properties. The Declarant will hold record title to the Common Areas for an indefinite period of time, subject to Article I paragraph (c) hereof, and subject to the easements set forth in Section 4.1 above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Midland) to encumber, mortgage, alter, improve, landscape and maintain the Common Areas, provided that Declarant fully and timely complies with any and all requirements of the City of Midland with respect thereto. The Association (as an unincorporated entity) will not hold title to any of the Common Areas and no Member or Owner will have a direct or undivided ownership interest in the Common Areas.

Section 4.3 - Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant (during the time the Association is unincorporated) or the Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Areas by the Members. The Board shall have the powers set forth in Section 5.2 of Article V with respect to enforce-

ment of such rules and regulations. A Member who shall be determined by the Board or by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees;

(b) Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the Declarant to develop and improve the Common Areas or by the Association (as an incorporated entity) to improve or maintain the Common Areas;

(c) The right of the Declarant or the Association to enter into and execute contracts with any party (including, without limitation, the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment against a Tract resided upon by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the then-existing rules and regulations for use of the Common Areas; and

(f) Subject to approval by written consent by the Members holding or controlling 60% or more of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

ARTICLE V.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1 - Powers and Duties with Respect to Assessments. The affairs of the Association, whether it is existing as an incorporated or unincorporated entity, shall be conducted by its Board of Directors ("the Board"). The Board, for the benefit of the Association, the Common Areas and the Owners shall provide for and shall pay for out of a fund maintained by it and made up of the Maintenance Assessments, the Special Assessments and the Individual Assessments provided for in Article VI hereof, the following expenses associated with and related to the Common Areas:

(a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of all personal property located in, on and/or affixed to the Common Areas;

(b) Establishment, installation and maintenance of an integrated security system for the safety and protection of the Owners and residents of the Subdivision;

(c) Charges for taxes, insurance and utilities (including, but not limited to electricity, gas, water and sewer charges) which pertain to and are related to the Common Areas only;

(d) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by any manager hired by the Board pursuant hereto;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 5.2 - Other Powers and Duties. The Board shall have the following additional rights, powers and duties:

(a) to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association as an incorporated entity;

(b) to enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Tracts, utility companies and companies maintaining security in the Subdivision with respect to:

(i) any taxes or insurance coverage on the Common Areas;

(ii) utility installation, consumption and service matters; and

(iii) installation, maintenance and operation of security systems;

(c) to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(d) to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operations and management of the Association;

(e) to protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(f) to make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time;

(g) subsequent to incorporation, to make available to each Owner within ninety (90) days after the end of each year an annual report of the operations of the Association;

(h) to obtain insurance and use its proceeds in accordance with Article VII hereof; and

(i) to enforce the provisions of this Declaration and any rules made hereunder, and in connection therewith, to seek damages from any Owner for violation of such provisions or rules and to enjoin any Owner from perpetrating any such violation.

Section 5.3 - Liability Limitations. None of (i) the Declarant, its agents or employees or (ii) the Association, its directors, its officers, its agents or its employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof located in the Subdivision or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation who shall make such repairs or effect such maintenance shall not be liable for any damage or injury to either person or property or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof located in the Subdivision, nor shall any director on the Board be liable to any Member for the performance and discharge of his duties as director on the Board.

Section 5.4 - Reserve Funds. The Board may, in its sole and absolute discretion, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order better to demonstrate (if deemed appropriate or necessary by the Board) that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE VI

Section 6.1 - Covenant and Lien for Assessments. The Declarant, for each Tract owned by it hereby covenants, and each Owner of a Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association: (1) regular assessments or charges (the "Maintenance Assessments") discussed at greater length hereinafter; (2) special assessments for capital improvements, or unusual or emergency matters (the "Special Assessments") such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments (the "Individual Assessments") which shall be levied against individual Tract Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of an individual Owner or the resident of the Tract owned by him. All of such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Maintenance Assessments, Special Assessments and Individual Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the real property covered by this Declaration and shall be a continuing lien upon each Tract against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Tract at the time when the assessment fell due.

Section 6.2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes: (i) of promoting the health, recreation, safety and welfare of the residents of the Subdivision, (ii) for carrying out the duties of the Board as set forth in Article V hereof, (iii) for carrying out the various matters set forth or envisioned herein or in any Supplementary Declaration related hereto which are to be accomplished or overseen by the Association, and (iv) for payment of expenses incurred by the Association in connection with zoning, subdivision, platting, building or development requirements of the City of Midland which impact the Subdivision.

Section 6.3 - Basis and Amount of Maintenance Assessments.

A. From and after the original date of commencement of Maintenance Assessments (when established by the Board) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the minimum Maintenance Assessment shall be \$10.00 per condominium, \$10.00 per townhouse, \$10.00 per duplex and \$10.00 per single family residence (other than condominiums and townhouses), provided such Assessment shall be reasonable in relationship to the amounts needed by the Association to cover its costs for ordinary maintenance.

B. From and after January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the Board may establish for each calendar year thereafter the maximum Maintenance Assessment for each Tract, provided that the maximum Maintenance Assessment for any year may not be increased more than 25% above the maximum Maintenance Assessment for the calendar year previous thereto unless such an increase is approved by the Owners as provided in Section 3.3 hereof.

C. The Board may subsequently fix the actual Maintenance Assessment at an amount equal to or less than the maximum Maintenance Assessment.

Section 6.4 - Special Assessment for Capital Improvements.

In addition to the Maintenance Assessments authorized above, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of the vote of not less than two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting of the Association duly called for this purpose.

Section 6.5 - Individual Assessments. In addition to the Maintenance Assessments and the Special Assessments authorized above, the Association may levy an Individual Assessment against a Tract, the Owner of which, through his willful or negligent acts or omissions or those of the other residents of the dwelling on such Tract, shall cause the Association to incur extra costs for repairs and maintenance. Such Individual Assessment shall be for the amount of such extra costs and shall only be levied (a) after the Owner of the Tract is given 10 days written notice by the Association of his obligation to the Association for such

extra costs and (b) after such Owner fails to pay such obligation within such 10 day period. The Association may levy an Individual Assessment against the same Owner for as many episodes or events as such Owner shall be responsible for that cause the Association to incur such extra costs.

Section 6.6 - Rate of Assessments. Both Maintenance and Special Assessments must be fixed at a uniform rate for all units within each class of residence or housing owned by the Owners (which classes consist of detached single-family residences, townhouses, condominiums and duplexes) unless otherwise approved by the Board.

Section 6.7 - Date of Commencement of Assessments;
Due Dates. The Maintenance Assessments shall commence to be levied on the date fixed by the Board for such commencement. The Board may prescribe from time to time that the Maintenance Assessments are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board shall prescribe the appropriate due dates. All Maintenance Assessments or proportionate parts thereof shall be collected in advance. The due date or dates of any Special Assessment or Individual Assessment under Sections 6.3 and 6.4 hereof, shall be fixed in the resolution authorizing such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the types of assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Maintenance Assessments, the Owner shall be entitled to annual notice thereof only. In addition, in the case of Maintenance Assessments, the written notice prescribed herein shall provide whether such assessments are to be collected on an annual, semi-annual, quarterly or monthly basis.

Section 6.8 - Duties of the Board Regarding Collection of Assessments.

A. The Board shall maintain a roster of the Tracts, the assessments applicable to each, the due date of each of such assessments, and whether any of such assessments is in default, which roster shall be kept in the office of the Association.

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

Section 6.9 - Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law (which shall be the "indicated rate ceiling" within the meaning of Article 5069-1.04, Texas Revised Civil Statutes) plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 hereof on the Tract or Tracts of the non-paying Owner and may be enforced at or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

ARTICLE VII

INSURANCE, REPAIR AND RESTORATION

Section 7.1 - Right to Purchase Insurance. The Board shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Subdivision or Common Areas, any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the agents, officers and employees of the Association, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location, and use to the property subject to such insurance. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Areas.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 7.2 - Insurance Proceeds. The Board shall use the net insurance proceeds to repair and replace any damage to or destruction of property, real or personal, covered by such insurance. Any balance for the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion or repair and replacement, shall be retained by the Board as part of a general reserve fund for repair and replacement of the Common Areas.

Section 7.3 - Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a Special Assessment as provided for in Article VI of the Declaration to cover the deficiency without the necessity of obtaining the approval of the Members of the Association with respect thereto.

ARTICLE VIII

USE OF LOTS AND PROPERTIES - PROTECTIVE COVENANTS

The Subdivision (and each Tract situated therein) shall be constructed, developed, occupied and used as follows:

Section 8.1 - Residential Lots. All Tracts within the Subdivision shall be used, known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any Tract other than a single-family dwelling (including detached single family residences, condominiums and townhouses) or duplex with, if any, customary and usual structures accessory thereto. Each condominium shall be deemed to be situated on its own separate Tract. No building or struc-

ture intended for or adapted to business purposes, with the exception of any apartment complex or complexes constructed in the Subdivision by Declarant or with the consent of Declarant, shall be erected, placed, permitted or maintained in the Subdivision, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Subdivision, other than the business engaged in by any such apartment complex or apartment complexes.

Section 8.2 - Condominiums and Duplexes. Rules relating to the density of condominium units in the Subdivision as well as their minimum livable floor spaces shall be prescribed from time to time by the Committee, in its sole discretion. Each one-story duplex constructed in the Subdivision shall contain a minimum of 1,100 square feet of livable floor space, exclusive of garage, patio or similar spaces, per side, and each two story duplex constructed in the Subdivision shall contain a minimum of 1,500 square feet of livable space, exclusive of garage, patio or similar spaces, per side.

Section 8.3 - Architectural Control Committee. Prior to the construction of improvements on any Tract in the Subdivision, there shall be an Architectural Control Committee, herein for convenience of reference from time to time called "the Committee," which shall be composed of three (3) individuals or business entities selected and appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the concern of Declarant for a high level of taste and design standards within the Subdivision. The Committee shall function as the representative of the Owners of the Tracts for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision.

In the event of the death or resignation of any member of the Committee, the Declarant shall have full authority to designate and appoint a successor to such member of the Committee. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to the Declaration.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Tract until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

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

(ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

(iii) location with respect to topography and finished grade elevation and effect of location on use of neighboring Tracts and improvements situated thereon;

(iv) drainage arrangements; and

(v) the other standards set forth within this Declaration (and any amendments or supplements hereto or restatements hereof) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Tract Owners or the general value of the Subdivision.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Tract Owner or his designated representative. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of their submission, then such plans shall be submitted to the Board. If the Board fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of such plans by the Committee and Association shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference.

Section 8.4 - Specific Use Restrictions. The following restrictions as to the use of each Tract in the Subdivision shall be applicable to each and every type of residence which is authorized by the terms hereof to be constructed, unless otherwise noted, with the exception of any apartment complex or apartment complexes constructed in the Subdivision:

(a) Each dwelling shall have attached to it an enclosed garage of the same construction and exterior finish as the rest of the dwelling; provided, however, that duplexes shall have a garage meeting the specifications hereof on each side. Garages must open to the rear of the

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(e) Dwellings may be constructed in the Subdivision without regard to one of the side setback lines on the Tract in accordance with the plat of the Subdivision. Such Tract lines are hereinafter called Zero Side Lines. Each Tract having a Zero Side Line is hereinafter called a Zero Side Line Tract. It is intended that the improvements to be placed upon each Tract having a Zero Side Line will be such as to afford privacy to the Tract immediately adjoining the Zero Side Line (hereinafter called the "Adjoining Tract"). The following provisions shall apply to such Zero Side Line, the Zero Side Line Tract and the Adjoining Tracts:

(1) The Owner of a Zero Side Line Tract shall, at the time of constructing a residence upon such Tract, construct a masonry wall not less than seven (7) feet tall nor more than eight (8) feet tall along the entire Zero Side Line from the front setback line of the Tract to the rear Tract line. To the extent that such wall constitutes all or any part of a wall of the residence or garage upon the Tract, it may be two (2) stories in height. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback line and the rear Tract Line may be an extension of such wall, but no other part of such residence or garage shall extend beyond such rear setback line. If the Owner of a Zero Side Line Tract shall desire to place an eave along the Zero Side Line such Owner shall set back part or all of such wall to the extent necessary to accommodate such eave so that it does not encroach upon the Adjoining Tract by extending over the said Zero Side Line. Such wall, regardless of its height, shall be without windows, doors, or other openings, and shall be of solid design so as completely to avoid visibility through any part thereof.

(2) Should an Owner of a Zero Side Line Tract wish to have doors or windows of the residence on such Tract facing the Adjoining Tract, which are not part of the wall on the Zero Side Line, each such window or door shall be set back from the Zero Side Line a minimum distance of eight (8) feet and each such window or door, in its entirety, shall be lower than the top of the wall along the Zero Side Line.

(3) The Owner of each Zero Side Line Tract shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon his Tract (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Tract. Guttering may not encroach into the Adjoining Tract more than six inches.

(4) Eaves of any structure upon a Zero Side Line Tract may not extend over such Zero Side Line into the Adjoining Tract, but guttering attached to eaves or fascia board may extend six inches into the Adjoining Tract.

(5) If the Owner of a Zero Side Line Tract shall set back from the Zero Side Line part or all of the wall along such Zero Side Line pursuant to the provisions contained in subparagraph (1) above, the Owner of the Adjoining Tract shall have an easement upon that portion of such Zero Side Line Tract which lies between the wall and the Zero Side Line for the purposes of planting and using and enjoying said area, and the Owner of the Zero Side Line Tract shall not be entitled

to the use and enjoyment thereof except for the purpose of building, maintaining, repairing and replacing any of the structures along the Zero Side Line.

(6) The Owner of such Zero Side Line Tract is hereby granted an easement upon the Adjoining Tract upon a strip of land six (6) feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any of the Owner's structures along the Zero Side Line. Eaves on the Adjoining Tract may overhang not more than two (2) feet into such easement and shall not be less than eight (8) feet from the ground. The Owner of the Adjoining Tract will have the right to use and enjoy the area subject to such easement and shall maintain such area. The Zero Side Line Tract Owner will be liable to the Adjoining Tract Owner for any damage to the Adjoining Tract (and to the land covered by the easement, if any, under subparagraph (5) above) caused by the use of such easement. The Adjoining Tract Owner may construct a brick fence or a fence of material approved in advance by the Committee perpendicular to and extending to the neighboring Zero Side Line or to the wall as it may be set back under the provisions of subparagraph (1), but any such fence shall have a gate with an easily removable section not less than four (4) feet wide so that the Zero Side Line Tract Owner will have access to this easement.

(7) The provisions herein contained for Zero Side Lines shall in no way be construed so as to allow detached single-family dwellings to be built on adjacent Tracts without observance of the side yard required to be between them by the Zoning Ordinances of the City of Midland.

(f) No Tract shall be resubdivided in any fashion.

(g) Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Subdivision.

(h) No noxious or offensive activities shall be carried on upon any Tract, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood in which such Tract is located.

(i) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage or other out-building shall be used on any Tract at any time as a residence, either temporarily or permanently.

(j) No signs of any kind or character shall be allowed on any Tract except one sign of not more than five square feet advertising the property upon which it is located for sale or rent; provided, however, the Declarant and any other person or entity engaged in the construction or sale of residences within the Subdivision shall have the right to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas and model units.

(k) No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on a Tract, nor shall oil wells, tanks,

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THE STATE OF TEXAS §
 §
 THE COUNTY OF MIDLAND §

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
 RESTRICTIONS FOR POLO PARK

The undersigned, Polo Park Associates, a Texas General Partnership, denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park which Declaration is dated April 16, 1982, and is of record in Vol. 720, Page 119, of the Deed Records of Midland County, Texas, desires to make an amendment to the terms and provisions thereof.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates, a Texas General Partnership, does hereby change and amend the same and it shall be deemed for all purposes that said Declaration as modified and amended by this Amendment thereto is incorporated herein and made a part hereof for all purposes as though set forth at length herein.

ARTICLE I

Subparagraph (e) of Section 8.04 of Article VIII is hereby deleted in its entirety and the following is inserted in lieu thereof:

(e) Dwellings may be constructed in the Subdivision without regard to one of the side setback lines on the Tract in accordance with the plat of the Subdivision. Such Tract lines are hereinafter called Zero Side Lines. Each Tract having a Zero Side Line is hereinafter called a Zero Side Line Tract. It is intended that the improvements to be placed upon each Tract having a Zero Side Line will be such as to afford privacy to the Tract immediately adjoining the Zero Side Line (hereinafter called the "Adjoining Tract"). The following provisions shall apply to such Zero Side Line, the Zero Side Line Tract and the Adjoining Tracts:

(1) The Owner of a Zero Side Line Tract shall, at the time of constructing a residence upon such Tract, construct a masonry wall not less than seven (7) feet tall nor more than eight (8) feet tall along the entire Zero Side Line from the front setback line of the Tract to the rear Tract line. To the extent that such wall constitutes all or any part of a wall of the residence or garage upon the Tract, it may be two (2) stories in height. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback line and the rear Tract Line may be an extension of such wall, but no other part of such residence or garage shall extend beyond such rear setback line. If the Owner of a Zero Side Line Tract shall desire to place an eave along the Zero Side Line such Owner shall set back part or all of such wall to the extent necessary to accommodate such eave so that it does not encroach upon the Adjoining Tract by extending over the said Zero Side Line by more than a distance of one foot running parallel with the Zero

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tunnels, mineral excavations or shafts be permitted on any Tract. No derrick or other structure designed for use in drilling for oil, natural gas or other minerals shall be erected, maintained or permitted on any Tract; provided, however, that the temporary use of a rig on a Tract for the purpose of drilling for underground water by a licensed water driller only shall be permitted if written, advance approval is obtained with respect to such utilization of any such rig from the Association.

(l) Garbage and trash storage facilities shall be screened by an adequate brick wall or fence in a manner acceptable to the Association. No Tract shall be used or maintained as a dumping ground for rubbish, trash or other waste material. In addition, during such time as there shall be construction on a Tract, the Owner of such Tract shall see to it that such Tract and the area surrounding it are kept reasonably clean and free of debris.

(m) No animal, livestock or poultry of any kind shall be raised, bred or kept on any Tract except that dogs, cats or other household pets may be kept on a Tract; provided, however, that such pets may not be kept for any commercial purpose.

(n) No fence, wall, screen, hedge, tree, shrub or structure shall be erected, planted or maintained in such a position as to in any way obstruct the view so as to constitute a traffic hazard as determined by the Committee and/or the Association.

(o) Gas meters shall be set near the alley in the rear or side of a residence unless any such meter is of an underground type which must be approved in writing and in advance by the Committee.

(p) No truck, bus, trailer or recreational vehicle shall be left parked in the street in front of any Tract except during such time as construction and repair equipment are needed to be placed on a Tract while a residence or residences are being built or repaired in the immediate vicinity thereof and no truck, bus, boat or trailer shall be parked on the driveway or any portion of a Tract in such a way as to be visible from the street in front of a Tract.

(q) No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract unless such activity shall be designed to accomplish the sale of the Tract.

(r) Construction of new buildings only shall be permitted in the Subdivision, it being the intent of this restrictive covenant to prohibit the moving of any existing building onto a Tract and remodeling or converting same into a residence in the Subdivision.

(s) Anything herein to the contrary notwithstanding, garden and screening walls may be constructed between the front property line and the front building set-back line, provided they are not in excess of four feet in height and are of materials approved in writing and in advance by the Committee. No part of a wall (1) between the rear set-back line and the rear Tract line, or (2) between the side set-back line and the side Tract line shall be over eight feet tall.

(t) Each owner of a Zero Side Line Tract, shall, after laying out a residence on a Tract, but prior to pouring a foundation thereon, shall engage a licensed civil engineer who shall prepare a certificate to be presented to the Committee stating that the construction laid out on the Tract meets all Zero Side Line and set-back line requirements of these Covenants and Restrictions or of the City of Midland, or both.

(u) No more than one residence may be constructed upon one Tract and no front yard of a residence in its entirety may be composed of concrete or cement, it being the intent hereof that all front yards of residences in the Subdivision shall contain grass or ground cover and other foliage in order to heighten the aesthetic attractiveness of the Subdivision. In order to effectuate such intent, all front yards of Tracts in the Subdivision shall have and are hereby required to have underground sprinkler systems in accordance with the minimum specifications with respect to such systems to be provided by the Committee.

(v) No individual water supply system (other than water supplied by a water well drilled in accordance with Section 8.4(k) hereof) or sewage disposal system shall be permitted on any Tract.

(w) At the time of construction of a residence on a Tract, a sidewalk must be built along the full street frontage of the Tract abutting the street curb in accordance with specifications to be provided by the Committee.

(x) No garage, servant house or out-building shall be occupied by the Owner, tenant of the Owner or anyone else prior to the construction of a residence on a Tract.

(y) No air-conditioning apparatus shall be installed on the ground in front of any residence on a Tract. No form of air-conditioning apparatus shall be attached to the front wall or side wall of a residence on a Tract other than compressor units for central air-conditioning systems. In the event a compressor is placed in the side yard of any Tract, such compressor must be located behind the front building line, but in no instance shall such compressor be located further toward the front property line of a Tract than the front wall of the residence. Any evaporative cooler installed on a Tract in the Subdivision shall not be visible from the street.

(z) Each Owner shall maintain all improvements upon his Tract in good condition and appearance, consistent with the high quality provided for herein as construed, defined and applied by the Committee and the Association. The maintenance of any screening walls or fences erected by the Declarant shall be the responsibility of the Owner or Owners of Tracts immediately adjacent thereto.

(aa) The Owner of a Tract shall have six (6) months from the date of closing of the purchase by him of such Tract in which to initiate and diligently pursue to completion physical construction of a residence thereon. In the event of the failure by any Owner to engage in such construction within such time, Declarant shall have the irrevocable option to purchase said Tract from said Owner at the purchase price for which said Owner originally purchased the Tract. Declarant shall exercise such irrevocable right and option by providing any such Owner with written notice of its intent to exercise such option in accordance with the notice provisions contained in Section 10.8 hereof.

Declarant shall have sixty (60) days from the expiration of six month period in which to exercise such right and option or such right and option shall become void and terminate sixty (60) days after the end of said six month ownership period by any such Owner. Notwithstanding the above, the Board may, in its sole discretion, approve variances of this restriction.

(bb) No residence shall be constructed in the Subdivision without installation of a basic minimum security device, the specifications for which must be obtained from the Committee. Said security devices shall be part of a Subdivision-wide, integrated security system. The Committee shall not approve the plans and specifications of any Owner of a Tract for construction of a residence without plans for such basic minimum security device being contained therein.

ARTICLE IX

EASEMENTS

Section 9.1 - Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Subdivision are reserved by Declarant for itself, its successors and assigns, the Association and all utility companies and security companies serving the Subdivision. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Subdivision 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 that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 9.2 - Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times to, from, over and upon the Common Areas for the purpose of the carrying out by the Association of its functions, duties and obligations hereunder.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 - Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as his or her true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as

Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 10.2 - Rezoning and Development. For a period of fifteen (15) years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object to, challenge, dispute, obstruct, hinder or in any manner disagree with Declarant's or Declarant's successors and assigns proposed or actual development (including without limitation, zoning, rezoning, platting or replatting efforts or processes pertaining to apartments, condominiums, shopping centers, office buildings or retail uses) or any real property within a one (1) mile-radius of all or any portion of the Subdivision, as it may be added to or increased in accordance with Article II of this Declaration.

Section 10.3 - Duration. The Covenants and Restrictions of this Declaration shall run with the land and bind the Subdivision, and shall inure to the benefit of and be enforceable by the Association, the Committee and/or the Owner of any Tract subject to this Declaration, their respective legal representatives, heirs, successors, and assigns (to the extent assignment is permitted them by the terms hereof), for a term of fifty (50) years from the date that this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent (95%) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolition.

Section 10.4 - Amendments. Notwithstanding Section 10.3 hereof, these Covenants and Restrictions may be amended and/or changed in part provided that approval of the City of Midland as to each of such changes shall be obtained before any such changes shall be effective. Such changes and amendments shall be obtained in accordance with the platting procedure of the City of Midland as follows:

(a) during the two (2) year period immediately following the date of recordation of the Declaration, the Declarant may amend or change those Covenants and Restrictions and shall not be required to obtain the consent of the

Association or the Members thereof to any such change or amendment;

(b) during the eight (8) year period immediately following the end of the two (2) year period set forth in subparagraph (a) immediately above, the Declarant may amend or change these Covenants and Restrictions with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association; and

(c) from and after the tenth (10th) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of the Association.

Any and all amendments to these Covenants and Restrictions shall be recorded in the office of the County Clerk of Midland County, Texas.

Section 10.5 - Enforcement. Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is injunctive in nature or for recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association, the Committee or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of its right to do so thereafter. The City of Midland, Texas, is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party. Notwithstanding any of the above, if at any time, an Owner of a Tract shall fail to control weeds, unsightly growth and/or debris on such Tract, Declarant or the Association shall have the right to enter upon such Tract and take whatever steps deemed necessary by Declarant or the Association to clean the Tract to Declarant's or the Association's reasonable satisfaction and to bring an Individual Assessment against said Tract in accordance with Section 6.1 hereof, collectible in accordance with Article VI hereof.

Section 10.6 - Validity and Severability. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on or against any Tract. Invalidity of any one or more of these Covenants and Restrictions, or any portion thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Midland, then such municipal ordinance or regulation shall control.

Section 10.7 - Headings, Gender and Number. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 10.8 - Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.9 - Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by its respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, the correct name and address of such mortgage holder(s) and a request from such mortgage holder(s) to receive such notification.

Section 10.10 - Disputes. Matters of dispute or disagreement between Owners or between Owners and the Committee, or between Owners and the Association or between the Committee and the Association with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board, whose determination with respect to any such dispute shall be final, binding and conclusive upon all interested parties.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, POLO PARK ASSOCIATES, a Texas General Partnership, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended and completely restated.

WITNESS THE EXECUTION HEREOF this 19TH day of JULY, 1983, but effective for all purposes as of April 16, 1982.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: Scott R. Steenson
Scott R. Steenson, Partner

DECLARANT

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 19th day of July, 1983, by SCOTT R. STEENSON, Partner of Polo Park Associates, a Texas General Partnership, on behalf of said partnership.

Pamela K. Hing
Notary Public, State of Texas

Print Name: Pamela K. Hing

My Commission Expires:

6/30/87

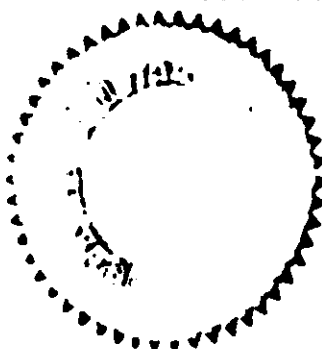


Exhibit "A"

This Admendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park is being refiled to set forth the lands described in said instrument being the lands described in Cabinet C, Page 77 of the Plat Records of Midland County, Texas, fully described by metes and bounds as being Polo Park, Section I; and the lands described in Cabinet C, Page 147 of the Plat Records of Midland County, Texas, fully described by metes and bounds as being Polo Park Section II.

STATE OF TEXAS COUNTY OF MIDLAND
I, County Clerk, do hereby certify that the within and foregoing instrument was duly recorded in the Public Records of Midland County, Texas, in the name of the County Clerk of Midland County, Texas, as shown by the record.



JUL 12 1983

*See Plat Records
Vol 270, Pg 599
with Copy*

COUNTY CLERK Midland County, Texas

Filed for Record on the 6 day of February A.D. 1984, at 2:55 o'clock P.M.
Duly Recorded this the 6 day of February A.D. 1984, at 3:00 o'clock P.M.

INSTRUMENT NO. 2470

ROSENELE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS
By Maria Luna, Deputy

Side Line. Such wall, regardless of its height, shall be without windows, doors, or other openings, and shall be of solid design so as completely to avoid visibility through any part thereof.

(2) Should an Owner of a Zero Side Line Tract wish to have doors or windows of the residence on such Tract facing the Adjoining Tract, which are not part of the wall on the Zero Side Line, each such window or door shall be set back from the Zero Side Line a minimum distance of eight (8) feet and each such window or door, in its entirety, shall be lower than the top of the wall along the Zero Side Line.

(3) The Owner of each Zero Side Line Tract shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon his Tract (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Tract.

(4) Eaves of any structure upon a Zero Side Line Tract may extend over such Zero Side Line into the Adjoining Tract but, as set forth above, only to the extent of one foot, however, guttering attached to eaves or fascia board may extend a distance of one foot six inches into the Adjoining Tract.

(5) If the Owner of a Zero Side Line Tract shall set back from the Zero Side Line part or all of the wall along such Zero Side Line pursuant to the provisions contained in subparagraph (1) above, the Owner of the Adjoining Tract shall have an easement upon that portion of such Zero Side Line Tract which lies between the wall and the Zero Side Line for the purposes of planting and using and enjoying said area, and the Owner of the Zero Side Line Tract shall not be entitled to the use and enjoyment thereof except for the purpose of building, maintaining, repairing and replacing any of the structures along the Zero Side Line.

(6) The Owner of such Zero Side Line Tract is hereby granted an easement upon the Adjoining Tract upon a strip of land six (6) feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any of the Owner's structures along the Zero Side Line. Eaves on the Adjoining Tract may overhang not more than two (2) feet into such easement and shall not be less than eight (8) feet from the ground. The Owner of the Adjoining Tract will have the right to use and enjoy the area subject to such easement and shall maintain such area. The Zero Side Line Tract Owner will be liable to the Adjoining Tract Owner for any damage to the Adjoining Tract (and to the land covered by the easement, if any, under subparagraph (5) above) caused by the use of such easement. The Adjoining Tract Owner may construct a brick fence or a fence of material approved in advance by the Committee perpendicular to and extending to the neighboring Zero Side Line or to the wall as it may be set back under the provisions of subparagraph (1) of this paragraph (e), but any such fence shall have a gate with an easily removable section not less than four (4) feet wide so that the Zero Side Line Tract Owner will have access to this easement.

(7) The provisions herein contained for Zero Side Lines shall in no way be construed so as to allow

detached single-family dwellings to be built on adjacent Tracts without observance of the side yard required to be between them by the Zoning Ordinances of the City of Midland.

ARTICLE II

Subparagraph (bb) of Section 8.04 of Article VIII is hereby deleted in its entirety and the following is inserted in lieu thereof:

(bb) No residence shall be constructed in the Subdivision without installation of a basic minimum security device, the specifications for which must be obtained from the Committee. Said security devices shall be part of a Subdivision-wide, integrated security system and will be amenable to being monitored from a central location in the Subdivision by the company or companies from time to time employed by the Association to provide security in the Subdivision. The Committee shall not approve the plans and specifications submitted by any Owner of a Tract for construction of a residence in the Subdivision if such plans and specifications do not contain provisions for the installation of such basic minimum security device. The Owner will then have the option of making his or her own arrangements with such company or companies for monitoring of the security device located in the Owner's residence by such company or companies.

WITNESS THE EXECUTION HEREOF this 2nd day of JULY, 1984, but effective for all purposes as of April 16, 1982.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: Scott R. Steenson
Scott R. Steenson, Partner

DECLARANT

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on this 3rd day of July, 1984, by SCOTT R. STEENSON, Partner of Polo Park Associates, a Texas General Partnership, on behalf of said partnership.

Kandy Settle
Notary Public, State of Texas

Print Name: KANDY SETTLE
My Commission Expires: 6-1-88



KANDY SETTLE
Notary Public, State of Texas
My Commission Expires June 1, 1988

Filed for Record on the 12 day of July A.D. 1984, at 10:15 o'clock A.M.
Duly Recorded this the 12 day of July A.D. 1984, at 10:20 o'clock A.M.

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

INSTRUMENT NO. 14064

By Maria Lora, Deputy

183/444
20810

THE STATE OF TEXAS §
 §
THE COUNTY OF MIDLAND §

AMENDMENT AND RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
POLO PARK

The undersigned, Polo Park Associates, a Texas General Partnership, denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park which Declaration is dated April 16, 1982 and is of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, desires to make substantial changes in the terms and provisions thereof, and considers a complete restatement thereof to be the most expedient method or manner in which to accomplish its purposes.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates, a Texas General Partnership, does hereby change and amend the same by amending various provisions thereof, by deleting certain provisions thereof, by adding certain new provisions thereto and by restating said Declaration, as so changed, supplemented and amended, in its entirety, which restatement is as follows:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 16 day of April 1982, by POLO PARK ASSOCIATES, a Texas General Partnership, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property described within Exhibit "A" to this Declaration, which Exhibit "A" is by this reference incorporated herein for all purposes hereof as though it were set forth at length herein, which real property represents the community unit development known as "Polo Park." Declarant desires to take advantage of the presently-existing unique geographical features of the said real property and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations with respect thereto in those portions of said real property dedicated to residential development (which portions shall hereinafter in the aggregate be referred to as the "Subdivision"). In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the Subdivision and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT the property situated in the Subdivision which is described within Exhibit "A", and such additions thereto as may hereafter be made

pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or any further Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

(a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Common Areas and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter prescribed. The Association, as of the date of recordation of this Declaration and continuing thereafter for an indefinite period of time, exists as an unincorporated association. At a point in time deemed appropriate by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas (under the name "Polo Park Homeowners Association, Inc." or a similar or comparable name, depending upon the then-existing availability of such corporate name(s)) for the purposes set forth herein.

(b) "Subdivision" in addition to its meaning as previously defined herein, shall mean and refer to any additions to such residential real property, which is or are subject to this Declaration or any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof.

(c) "Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as common green, common areas, parks, recreational easements, boulevards, greenbelts or open spaces on any recorded subdivision plat of the Subdivision or which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. Specifically, the Common Area in Section Two of the Subdivision, sometimes known as "Common Area No. 5," in the records relating to subdivisions maintained by the City of Midland, Texas, will, in accordance with and subject to all of the covenants, conditions and restrictions contained herein which are applicable to Common Areas, be reserved for and ultimately occupied by a clubhouse, together with swimming pool and one tennis court, with immediately adjacent paved parking area. Pedestrian ingress and egress to and from said Common Area No. 5 shall be by means of that certain ten-foot wide access easement from Devonshire Court (as set forth on the plat of the Subdivision) to said Common Area No. 5. Declarant proposes to hold record title to the Common Areas, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common

Areas, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant but prior to the tenth (10th) anniversary of the recordation of this Declaration) after the Association has been incorporated, record title to the Common Areas will be transferred from the Declarant to the Association. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

(d) "Tract" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subdivision, as amended from time to time, which is designated as a lot or tract therein and which is or will be improved with a single-family residential dwelling (which term includes detached single family residences, townhouses and condominium units) or duplex in conformity with any building restrictions applicable thereto.

(e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Tract subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Tract as security merely for the performance of an obligation.

(f) "Member" shall mean and refer to an Owner of a Tract.

(g) "Declarant" as previously defined herein, shall mean and refer to Polo Park Associates, a Texas General Partnership, and its successors and assigns, if any. No person or entity, merely by purchasing one or more Tracts from Polo Park Associates, a Texas General Partnership, or its successors and assigns in the ordinary course of its business shall be considered to be "Declarant."

ARTICLE II.

ADDITIONS TO SUBDIVISION SUBJECT TO THIS DECLARATION

Subdivision. Additional land may become subject to this Declaration in any of the following manners, to-wit:

(a) Declarant may add or annex additional real property (from time to time and at any time) to the scheme of this Declaration by filing of record in Midland County, Texas a Supplemental Declaration of Covenants, Conditions and Restrictions or other amendatory document which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that any such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concepts and purposes of this Declaration;

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation proposal must have the prior written consent and

approval of the majority of the outstanding votes within each voting class of the Association;

(c) Any additions made pursuant to paragraphs (a) and (b) of this Article II, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association and the Architectural Control Committee to the properties added and correspondingly subject the properties added to the Covenants and Restrictions contained in this Declaration or any Supplementary Declaration thereto; and

(d) Upon a merger or consolidation of the Association (as an incorporated entity) 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 such a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration for the Subdivision together with the covenants and restrictions established upon any other properties over which it would then have jurisdiction as one scheme.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1 - Membership. Every Owner of a Tract shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing.

Section 3.2 - Voting Rights. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Tract Owners other than Class B Members. Class A Members shall be entitled to one (1) vote for each Tract in which they hold the interest required for membership. When more than one person holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Tract.

CLASS B: Class B Members shall consist of the Declarant and Tract Owners who are engaged in the process of constructing residential dwellings on their respective Tracts for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one (1) vote for each Tract owned. The Declarant alone, however, shall be entitled to six (6) votes for each Tract it owns or in which it owns a lien of whatever kind or character. The Class B Membership shall cease, and each Class B Member shall become a Class A Member:

(i) when the total number of votes outstanding in the Class A Membership is eight (8) times greater than the total number of votes outstanding in the Class B Membership; or

(ii) on the tenth (10th) anniversary date of the lawful commencement date of the Association as an incorporated entity,

whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article X hereinafter, until:

(a) The Declarant no longer owns:

(i) record title to any Tract; and

(ii) a lien interest in any Tract; and

(iii) title to any adjoining acreage intended by Declarant to be developed as an additional section or phase of the Subdivision; or

(b) The tenth (10th) anniversary of the recording date for this Declaration,

whichever occurs first in time, neither the Association nor the Members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which consent shall not be unreasonably withheld or delayed.

Section 3.3 - Quorum Notice and Voting Requirements.

(a) Subject to the provisions of Sections 3.2, 4.3, 6.4 and 10.4 hereof, as well as paragraph (c) of this Section, any action upon which the Members shall be required to vote shall require the assent of the majority of the Members of the Association voting in person or by proxy with respect to each matter requiring a vote of each Member at a meeting duly called for such purposes, written notice of which shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose or purposes of such meeting.

(b) The quorum required for any action referred to in paragraph (a) of this Section shall be as follows:

At the first meeting called, the presence at the meeting of Members, or of legitimate proxies, entitled to cast sixty percent (60%) of all of the votes of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, an additional meeting or meetings may be called for the same purposes of such first meeting, subject to the notice requirement hereinabove set forth, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting; provided, however, that no such subsequent meeting shall be held more than ninety (90) days following the first meeting.

(c) As an alternative to the procedure set forth above, but subject to the provisions of Section 3.2 above, any action referred to in paragraph (a) of this Section 3.3 may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent (60%) of the outstanding votes of the Association.

(d) Except as specifically set forth in paragraph (a) of this Section 3.3 or elsewhere in this Declaration:

(i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and

(ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, as the same may be amended from time to time.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON AREAS

Section 4.1 - Members' Easements of Enjoyment. Subject to the provisions of Section 4.3 hereof, every Member and each individual who resides with a Member in a residence located on a Tract shall have a right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to each respective Tract, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alterations, additions or improvements to the Common Areas. Such easements shall be limited to Members and individuals who reside with Members in a residence located on a Tract. No Member shall do anything or permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or increase in any insurance carried by the Association or which would result in the violation of any law or any rule or regulation promulgated by the Board. Any such violation will subject the Member or individual residing with him who perpetrates such violation to the Special Individual Assessment pursuant to Article VI hereof. No alcoholic beverages may be sold on the Common Areas, but Members will be entitled to carry alcoholic beverages onto the Common Areas for their own consumption.

Section 4.2 - Title to the Common Properties. The Declarant will hold record title to the Common Areas for an indefinite period of time, subject to Article I paragraph (c) hereof, and subject to the easements set forth in Section 4.1 above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Midland) to encumber, mortgage, alter, improve, landscape and maintain the Common Areas, provided that Declarant fully and timely complies with any and all requirements of the City of Midland with respect thereto. The Association (as an unincorporated entity) will not hold title to any of the Common Areas and no Member or Owner will have a direct or undivided ownership interest in the Common Areas.

Section 4.3 - Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant (during the time the Association is unincorporated) or the Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Areas by the Members. The Board shall have the powers set forth in Section 5.2 of Article V with respect to enforce-

ment of such rules and regulations. A Member who shall be determined by the Board or by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees;

(b) Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the Declarant to develop and improve the Common Areas or by the Association (as an incorporated entity) to improve or maintain the Common Areas;

(c) The right of the Declarant or the Association to enter into and execute contracts with any party (including, without limitation, the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment against a Tract resided upon by such Member remains unpaid, and for any period not to exceed sixty (60) days for an infraction of the then-existing rules and regulations for use of the Common Areas; and

(f) Subject to approval by written consent by the Members holding or controlling 60% or more of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

ARTICLE V.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1 - Powers and Duties with Respect to Assessments.

The affairs of the Association, whether it is existing as an incorporated or unincorporated entity, shall be conducted by its Board of Directors ("the Board"). The Board, for the benefit of the Association, the Common Areas and the Owners shall provide for and shall pay for out of a fund maintained by it and made up of the Maintenance Assessments, the Special Assessments and the Individual Assessments provided for in Article VI hereof, the following expenses associated with and related to the Common Areas:

(a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of all personal property located in, on and/or affixed to the Common Areas;

(b) Establishment, installation and maintenance of an integrated security system for the safety and protection of the Owners and residents of the Subdivision;

(c) Charges for taxes, insurance and utilities (including, but not limited to electricity, gas, water and sewer charges) which pertain to and are related to the Common Areas only;

(d) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by any manager hired by the Board pursuant hereto;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 5.2 - Other Powers and Duties. The Board shall have the following additional rights, powers and duties:

(a) to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association as an incorporated entity;

(b) to enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Tracts, utility companies and companies maintaining security in the Subdivision with respect to:

(i) any taxes or insurance coverage on the Common Areas;

(ii) utility installation, consumption and service matters; and

(iii) installation, maintenance and operation of security systems;

(c) to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(d) to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operations and management of the Association;

(e) to protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(f) to make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time;

(g) subsequent to incorporation, to make available to each Owner within ninety (90) days after the end of each year an annual report of the operations of the Association;

(h) to obtain insurance and use its proceeds in accordance with Article VII hereof; and

(i) to enforce the provisions of this Declaration and any rules made hereunder, and in connection therewith, to seek damages from any Owner for violation of such provisions or rules and to enjoin any Owner from perpetrating any such violation.

Section 5.3 - Liability Limitations. None of (i) the Declarant, its agents or employees or (ii) the Association, its directors, its officers, its agents or its employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof located in the Subdivision or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation who shall make such repairs or effect such maintenance shall not be liable for any damage or injury to either person or property or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof located in the Subdivision, nor shall any director on the Board be liable to any Member for the performance and discharge of his duties as director on the Board.

Section 5.4 - Reserve Funds. The Board may, in its sole and absolute discretion, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order better to demonstrate (if deemed appropriate or necessary by the Board) that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE VI

Section 6.1 - Covenant and Lien for Assessments. The Declarant, for each Tract owned by it hereby covenants, and each Owner of a Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association: (1) regular assessments or charges (the "Maintenance Assessments") discussed at greater length herein-after; (2) special assessments for capital improvements, or unusual or emergency matters (the "Special Assessments") such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments (the "Individual Assessments") which shall be levied against individual Tract Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of an individual Owner or the residents of the Tract owned by him. All of such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Maintenance Assessments, Special Assessments and Individual Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the real property covered by this Declaration and shall be a continuing lien upon each Tract against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Tract at the time when the assessment fell due.

Section 6.2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes: (i) of promoting the health, recreation, safety and welfare of the residents of the Subdivision, (ii) for carrying out the duties of the Board as set forth in Article V hereof, (iii) for carrying out the various matters set forth or envisioned herein or in any Supplementary Declaration related hereto which are to be accomplished or overseen by the Association, and (iv) for payment of expenses incurred by the Association in connection with zoning, subdivision, platting, building or development requirements of the City of Midland which impact the Subdivision.

Section 6.3 - Basis and Amount of Maintenance Assessments.

A. From and after the original date of commencement of Maintenance Assessments (when established by the Board) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the minimum Maintenance Assessment shall be \$10.00 per condominium, \$10.00 per townhouse, \$10.00 per duplex and \$10.00 per single family residence (other than condominiums and townhouses), provided such Assessment shall be reasonable in relationship to the amounts needed by the Association to cover its costs for ordinary maintenance.

B. From and after January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the Board may establish for each calendar year thereafter the maximum Maintenance Assessment for each Tract, provided that the maximum Maintenance Assessment for any year may not be increased more than 25% above the maximum Maintenance Assessment for the calendar year previous thereto unless such an increase is approved by the Owners as provided in Section 3.3 hereof.

C. The Board may subsequently fix the actual Maintenance Assessment at an amount equal to or less than the maximum Maintenance Assessment.

Section 6.4 - Special Assessment for Capital Improvements. In addition to the Maintenance Assessments authorized above, the Association may levy in any assessment year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such Special Assessment shall have the assent of the vote of not less than two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting of the Association duly called for this purpose.

Section 6.5 - Individual Assessments. In addition to the Maintenance Assessments and the Special Assessments authorized above, the Association may levy an Individual Assessment against a Tract, the Owner of which, through his willful or negligent acts or omissions or those of the other residents of the dwelling on such Tract, shall cause the Association to incur extra costs for repairs and maintenance. Such Individual Assessment shall be for the amount of such extra costs and shall only be levied (a) after the Owner of the Tract is given 10 days written notice by the Association of his obligation to the Association for such

extra costs and (b) after such Owner fails to pay such obligation within such 10 day period. The Association may levy an Individual Assessment against the same Owner for as many episodes or events as such Owner shall be responsible for that cause the Association to incur such extra costs.

Section 6.6 - Rate of Assessments. Both Maintenance and Special Assessments must be fixed at a uniform rate for all units within each class of residence or housing owned by the Owners (which classes consist of detached single-family residences, townhouses, condominiums and duplexes) unless otherwise approved by the Board.

Section 6.7 - Date of Commencement of Assessments;
Due Dates. The Maintenance Assessments shall commence to be levied on the date fixed by the Board for such commencement. The Board may prescribe from time to time that the Maintenance Assessments are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board shall prescribe the appropriate due dates. All Maintenance Assessments or proportionate parts thereof shall be collected in advance. The due date or dates of any Special Assessment or Individual Assessment under Sections 6.3 and 6.4 hereof, shall be fixed in the resolution authorizing such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the types of assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Maintenance Assessments, the Owner shall be entitled to annual notice thereof only. In addition, in the case of Maintenance Assessments, the written notice prescribed herein shall provide whether such assessments are to be collected on an annual, semi-annual, quarterly or monthly basis.

Section 6.8 - Duties of the Board Regarding Collection of Assessments.

A. The Board shall maintain a roster of the Tracts, the assessments applicable to each, the due date of each of such assessments, and whether any of such assessments is in default, which roster shall be kept in the office of the Association.

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

Section 6.9 - Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law (which shall be the "indicated rate ceiling" within the meaning of Article 5069-1.04, Texas Revised Civil Statutes) plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 hereof on the Tract or Tracts of the non-paying Owner and may be enforced at or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

ARTICLE VII

INSURANCE, REPAIR AND RESTORATION

Section 7.1 - Right to Purchase Insurance. The Board shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Subdivision or Common Areas, any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the agents, officers and employees of the Association, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location, and use to the property subject to such insurance. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Areas.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 7.2 - Insurance Proceeds. The Board shall use the net insurance proceeds to repair and replace any damage to or destruction of property, real or personal, covered by such insurance. Any balance for the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion or repair and replacement, shall be retained by the Board as part of a general reserve fund for repair and replacement of the Common Areas.

Section 7.3 - Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a Special Assessment as provided for in Article VI of the Declaration to cover the deficiency without the necessity of obtaining the approval of the Members of the Association with respect thereto.

ARTICLE VIII

USE OF LOTS AND PROPERTIES - PROTECTIVE COVENANTS

The Subdivision (and each Tract situated therein) shall be constructed, developed, occupied and used as follows:

Section 8.1 - Residential Lots. All Tracts within the Subdivision shall be used, known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any Tract other than a single-family dwelling (including detached single family residences, condominiums and townhouses) or duplex with, if any, customary and usual structures accessory thereto. For purposes of establishing membership in the Association, each condominium shall be deemed to be situated on its own separate Tract. No building or

structure intended for or adapted to business purposes, with the exception of any apartment complex or complexes constructed in the Subdivision by Declarant or with the consent of Declarant, shall be erected, placed, permitted or maintained in the Subdivision, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Subdivision, other than the business engaged in by any such apartment complex or apartment complexes.

Section 8.2 - Condominiums and Duplexes. Rules relating to the density of condominium units in the Subdivision as well as their minimum livable floor spaces shall be prescribed from time to time by the Committee, in its sole discretion, provided said rules are consistent with the City Code promulgated by the City of Midland, Texas. Each one-story duplex constructed in the Subdivision shall contain a minimum of 1,100 square feet of livable floor space, exclusive of garage, patio or similar spaces, per side, and each two story duplex constructed in the Subdivision shall contain a minimum of 1,500 square feet of livable space, exclusive of garage, patio or similar spaces, per side. OK

Section 8.3 - Architectural Control Committee. Prior to the construction of improvements on any Tract in the Subdivision, there shall be an Architectural Control Committee, herein for convenience of reference from time to time called "the Committee," which shall be composed of three (3) individuals or business entities selected and appointed by Declarant, each generally familiar with residential and community development design matters and knowledgeable about the concern of Declarant for a high level of taste and design standards within the Subdivision. The Committee shall function as the representative of the Owners of the Tracts for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision.

In the event of the death or resignation of any member of the Committee, the Declarant shall have full authority to designate and appoint a successor to such member of the Committee. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to the Declaration.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Tract until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

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

(ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;

(iii) location with respect to topography and finished grade elevation and effect of location on use of neighboring Tracts and improvements situated thereon;

(iv) drainage arrangements; and

(v) the other standards set forth within this Declaration (and any amendments or supplements hereto or restatements hereof) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Tract Owners or the general value of the Subdivision.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Tract Owner or his designated representative. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, as required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen (15) days after the date of their submission, then such plans shall be submitted to the Board. If the Board fails to approve or disapprove such plans and specifications within fifteen (15) days, then the approval of such plans by the Committee and Association shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference.

Section 8.4 - Specific Use Restrictions. The following restrictions as to the use of each Tract in the Subdivision shall be applicable to each and every type of residence which is authorized by the terms hereof to be constructed, unless otherwise noted, with the exception of any apartment complex or apartment complexes constructed in the Subdivision:

(a) Each dwelling shall have attached to it an enclosed garage of the same construction and exterior finish as the rest of the dwelling; provided, however, that duplexes shall have a garage meeting the specifications hereof on each side. Garages must open to the rear of the

Tract unless a specific variation of this use restriction is approved in writing and in advance by the Committee. Each garage shall contain sufficient space to house two conventional automobiles. A porto-cochere may be constructed on a Tract but only in addition to a garage meeting the requirements hereof and only with the advance written approval of the Committee with respect thereto.

(b) The types of residences which may be constructed on Tracts in the Subdivision but which may not exceed two stories in height consist of detached single family residences, townhouses, condominium units and duplexes. If the Tract upon which the residence is to be built is less than 60 feet in width, then any single family residence constructed thereon, other than a condominium, must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,500 square feet of such livable space if one story and 1,800 square feet of such livable space if two stories. If the Tract upon which the residence is to be built is 60 feet or wider in width, then any single family residence constructed thereon other than a condominium or duplex must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,800 square feet of such livable space if one story and 2,200 square feet of such livable space if two stories, of which not less than 1,450 square feet of such space must be contained in the ground floor. The requirements for livable floor space for duplexes are set forth in Section 8.2 hereof. No Tract upon which a duplex is to be constructed shall be less than 60 feet in width.

(c) All residences constructed on Tracts in the Subdivision shall be of no less than seventy-five percent (75%) brick veneer in their entirety and such brick veneer shall extend from grade level to the eave or roof line of the residence. Any such residence must have a roof of wood shake shingles. The roof pitch of any structure on a Tract in the Subdivision shall be six feet by twelve feet minimum and twelve feet by twelve feet maximum. The Committee shall have the authority to vary the restrictions contained in this paragraph if and only if, (i) any proposed variations are submitted to it in advance of the commencement of construction of improvements with the proposed variations and (ii) the Committee shall issue its written authorization thereof in advance of the commencement of construction of improvements with the proposed variations.

(d) Except as herein specifically provided, no building, garage, wall or fence shall extend beyond the minimum building lines or setback lines shown upon the plat of the Subdivision, for the front, rear and side yards and no such wall shall be more than 8 feet in height unless otherwise provided hereinafter. Walls along Zero Side Lines, as hereinafter defined, shall extend to rear Tract lines, and the minimum rear building lines or rear setback lines shall not apply to such walls. Fences or walls may also extend to side Tract lines subject to the provisions hereinafter contained. Walls along or within a side setback line may extend to the rear Tract line. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback or building line and the rear Tract line may be an extension of such wall.

(e) Dwellings may be constructed in the Subdivision without regard to one of the side setback lines on the Tract in accordance with the plat of the Subdivision. Such Tract lines are hereinafter called Zero Side Lines. Each Tract having a Zero Side Line is hereinafter called a Zero Side Line Tract. It is intended that the improvements to be placed upon each Tract having a Zero Side Line will be such as to afford privacy to the Tract immediately adjoining the Zero Side Line (hereinafter called the "Adjoining Tract"). The following provisions shall apply to such Zero Side Line, the Zero Side Line Tract and the Adjoining Tracts:

(1) The Owner of a Zero Side Line Tract shall, at the time of constructing a residence upon such Tract, construct a masonry wall not less than seven (7) feet tall nor more than eight (8) feet tall along the entire Zero Side Line from the front setback line of the Tract to the rear Tract line. To the extent that such wall constitutes all or any part of a wall of the residence or garage upon the Tract, it may be two (2) stories in height. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback line and the rear Tract Line may be an extension of such wall, but no other part of such residence or garage shall extend beyond such rear setback line. If the Owner of a Zero Side Line Tract shall desire to place an eave along the Zero Side Line such Owner shall set back part or all of such wall to the extent necessary to accommodate such eave so that it does not encroach upon the Adjoining Tract by extending over the said Zero Side Line by more than distance of one foot running parallel with the Zero Side Line. Such wall, regardless of its height, shall be of solid design so as completely to avoid visibility through any part thereof.

(2) Should an Owner of a Zero Side Line Tract wish to have doors or windows of the residence on such Tract facing the Adjoining Tract, which are not part of the wall on the Zero Side Line, each such window or door shall be set back from the Zero Side Line a minimum distance of ten (10) feet and each such window or door, in its entirety, shall be lower than the top of the wall along the Zero Side Line.

(3) The Owner of each Zero Side Line Tract shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon his Tract (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Tract.

(4) Eaves of any structure upon a Zero Side Line Tract may not extend over such Zero Side Line into the Adjoining Tract but, as set forth above, only to the extent of one foot, however, guttering attached to eaves or fascia board may extend a distance of one foot six inches into the Adjoining Tract.

(5) If the Owner of a Zero Side Line Tract shall set back from the Zero Side Line part or all of the wall along such Zero Side Line pursuant to the provisions contained in subparagraph (1) above, the Owner of the Adjoining Tract shall have an easement upon that portion of such Zero Side Line Tract which lies between the wall and the Zero Side Line for the purposes of planting and using and enjoying said area, and the Owner of the Zero Side Line Tract shall not be entitled

to the use and enjoyment thereof except for the purpose of building, maintaining, repairing and replacing any of the structures along the Zero Side Line.

(6) The Owner of such Zero Side Line Tract is hereby granted an easement upon the Adjoining Tract upon a strip of land six (6) feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any of the Owner's structures along the Zero Side Line. Eaves on the Adjoining Tract may overhang not more than two (2) feet into such easement and shall not be less than eight (8) feet from the ground. The Owner of the Adjoining Tract will have the right to use and enjoy the area subject to such easement and shall maintain such area. The Zero Side Line Tract Owner will be liable to the Adjoining Tract Owner for any damage to the Adjoining Tract (and to the land covered by the easement, if any, under subparagraph (5) above) caused by the use of such easement. The Adjoining Tract Owner may construct a brick fence or a fence of material approved in advance by the Committee perpendicular to and extending to the neighboring Zero Side Line or to the wall as it may be set back under the provisions of subparagraph (1) of this paragraph (e), but any such fence shall have a gate with an easily removable section not less than four (4) feet wide so that the Zero Side Line Tract Owner will have access to this easement.

(7) The provisions herein contained for Zero Side Lines shall in no way be construed so as to allow detached single-family dwellings to be built on adjacent Tracts without observance of the side yard required to be between them by the Zoning Ordinances of the City of Midland.

(f) No Tract shall be resubdivided in any fashion.

(g) Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Subdivision.

(h) No noxious or offensive activities shall be carried on upon any Tract, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood in which such Tract is located.

(i) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage or other out-building shall be used on any Tract at any time as a residence, either temporarily or permanently.

(j) No signs of any kind or character shall be allowed on any Tract except one sign of not more than five square feet advertising the property upon which it is located for sale or rent; provided, however, the Declarant and any other person or entity engaged in the construction or sale of residences within the Subdivision shall have the right to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including, but not limited to, signs, offices, storage areas and model units.

(k) No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on a Tract, nor shall oil wells, tanks,

tunnels, mineral excavations or shafts be permitted on any Tract. No derrick or other structure designed for use in drilling for oil, natural gas or other minerals shall be erected, maintained or permitted on any Tract; provided, however, that the temporary use of a rig on a Tract for the purpose of drilling for underground water by a licensed water driller only shall be permitted if written, advance approval is obtained with respect to such utilization of any such rig from the Association.

(l) Garbage and trash storage facilities shall be screened by an adequate brick wall or fence in a manner acceptable to the Association. No Tract shall be used or maintained as a dumping ground for rubbish, trash or other waste material. In addition, during such time as there shall be construction on a Tract, the Owner of such Tract shall see to it that such Tract and the area surrounding it are kept reasonably clean and free of debris.

(m) No animal, livestock or poultry of any kind shall be raised, bred or kept on any Tract except that dogs, cats or other household pets may be kept on a Tract; provided, however, that such pets may not be kept for any commercial purpose.

(n) No fence, wall, screen, hedge, tree, shrub or structure shall be erected, planted or maintained in such a position as to in any way obstruct the view so as to constitute a traffic hazard as determined by the Committee and/or the Association.

(o) Gas meters shall be set near the alley in the rear or side of a residence unless any such meter is of an underground type which must be approved in writing and in advance by the Committee.

(p) No truck, bus, trailer or recreational vehicle shall be left parked in the street in front of any Tract except during such time as construction and repair equipment are needed to be placed on a Tract while a residence or residences are being built or repaired in the immediate vicinity thereof and no truck, bus, boat or trailer shall be parked on the driveway or any portion of a Tract in such a way as to be visible from the street in front of a Tract.

(q) No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract unless such activity shall be designed to accomplish the sale of the Tract.

(r) Construction of new buildings only shall be permitted in the Subdivision, it being the intent of this restrictive covenant to prohibit the moving of any existing building onto a Tract and remodeling or converting same into a residence in the Subdivision.

(s) Anything herein to the contrary notwithstanding, garden and screening walls may be constructed between the front property line and the front building set-back line, provided they are built consistent with applicable provisions of the City Code promulgated by the City of Midland and provided they are not in excess of four feet in height and are of materials approved in writing and in advance by the Committee. No part of a wall (1) between the rear set-back line and the rear Tract line, or (2) between the side set-back line and the side Tract line shall be over eight feet tall.

(t) Each owner of a Zero Side Line Tract, shall, after laying out a residence on a Tract, but prior to pouring a foundation thereon, shall engage a licensed civil engineer who shall prepare a certificate to be presented to the Committee stating that the construction laid out on the Tract meets all Zero Side Line and set-back line requirements of these Covenants and Restrictions or of the City of Midland, or both.

(u) No more than one residence may be constructed upon one Tract and no front yard of a residence in its entirety may be composed of concrete or cement, it being the intent hereof that all front yards of residences in the Subdivision shall contain grass or ground cover and other foliage in order to heighten the aesthetic attractiveness of the Subdivision. In order to effectuate such intent, all front yards of Tracts in the Subdivision shall have and are hereby required to have underground sprinkler systems in accordance with the minimum specifications with respect to such systems to be provided by the Committee.

(v) No individual water supply system (other than water supplied by a water well drilled in accordance with Section 8.4(k) hereof) or sewage disposal system shall be permitted on any Tract.

(w) At the time of construction of a residence on a Tract, a sidewalk must be built along the full street frontage of the Tract accordance with specifications to be provided by the Committee which will conform to the applicable provision of the City Code promulgated by the City of Midland.

(x) No garage, servant house or out-building shall be occupied by the Owner, tenant of the Owner or anyone else prior to the construction of a residence on a Tract.

(y) No air-conditioning apparatus shall be installed on the ground in front of any residence on a Tract. No form of air-conditioning apparatus shall be attached to the front wall or side wall of a residence on a Tract other than compressor units for central air-conditioning systems. In the event a compressor is placed in the side yard of any Tract, such compressor must be located behind the front building line, but in no instance shall such compressor be located further toward the front property line of a Tract than the front wall of the residence. Any evaporative cooler installed on a Tract in the Subdivision shall not be visible from the street.

(z) Each Owner shall maintain all improvements upon his Tract in good condition and appearance, consistent with the high quality provided for herein as construed, defined and applied by the Committee and the Association. The maintenance of any screening walls or fences erected by the Declarant shall be the responsibility of the Owner or Owners of Tracts immediately adjacent thereto.

(aa) The Owner of a Tract shall have six (6) months from the date of closing of the purchase by him of such Tract in which to initiate and diligently pursue to completion physical construction of a residence thereon; provided that if an Owner shall on the same date close the purchase by him of five or more Tracts, any such Owner shall be known as a "Multi-Tract Owner" or, collectively, as "Multi-Tract Owners" and this provision shall not be applicable to him or them. This provision shall, however, be fully applicable to Owners who subsequently purchase a Tract from a Multi-Tract Owner

effective the closing date of such purchase. In the event of the failure by any Owner, other than a Multi-Tract Owner, to engage in such construction within such time, Declarant shall have the exclusive, irrevocable right and option to purchase said Tract from said Owner at the purchase price for which said Owner originally purchased the Tract whether from Declarant or Multi-Tract Owner. Declarant shall exercise such exclusive, irrevocable right and option by providing any such Owner with written notice of its intent to exercise such option in accordance with the notice provisions contained in Section 10.8 hereof. Declarant shall have sixty (60) days from the expiration of such six month period in which to exercise its said exclusive, irrevocable right and option or such right and option shall become void and terminate sixty (60) days after the end of said six month ownership period by any such Owner. Notwithstanding the above, the Board may, in its sole discretion, approve variances of this restriction.

(bb) No residence shall be constructed in the Subdivision without installation of a basic minimum security device, the specifications for which must be obtained from the Committee. Said security devices shall be part of a Subdivision-wide, integrated security system and will be amenable to being monitored from a central location in the Subdivision by the company or companies from time to time employed by the Association to provide security in the Subdivision. The Committee shall not approve the plans and specifications submitted by any Owner of a Tract for construction of a residence in the Subdivision if such plans and specifications do not contain provisions for the installation of such basic minimum security device. The Owner will then have the option of making his or her own arrangements with such company or companies for monitoring of the security device located in the Owner's residence by such company or companies.

ARTICLE IX

EASEMENTS

Section 9.1 - Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Subdivision are reserved by Declarant for itself, its successors and assigns, the Association and all utility companies and security companies serving the Subdivision. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Subdivision 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 that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 9.2 - Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times to, from, over and upon the Common Areas for the purpose of the carrying out by the Association of its functions, duties and obligations hereunder.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 - Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as his or her true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 10.2 - Rezoning and Development. For a period of fifteen (15) years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object to, challenge, dispute, obstruct, hinder or in any manner disagree with Declarant's or Declarant's successors and assigns proposed or actual development (including without limitation, zoning, rezoning, platting or replatting efforts or processes pertaining to apartments, condominiums, shopping centers, office buildings or retail uses) or any real property within a one (1) mile radius of all or any portion of the Subdivision, as it may be added to or increased in accordance with Article II of this Declaration.

Section 10.3 - Duration. The Covenants and Restrictions of this Declaration shall run with the land and bind the Subdivision, and shall inure to the benefit of and be enforceable by the Association, the Committee and/or the Owner of any Tract subject to this Declaration, their respective legal representatives, heirs, successors, and assigns (to the extent assignment is permitted them by the terms hereof), for a term of fifty (50) years from the date that this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than

ARTICLE X

GENERAL PROVISIONS

Section 10.1 - Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as his or her true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 10.2 - Rezoning and Development. For a period of fifteen (15) years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object to, challenge, dispute, obstruct, hinder or in any manner disagree with Declarant's or Declarant's successors and assigns proposed or actual development (including without limitation, zoning, rezoning, platting or replatting efforts or processes pertaining to apartments, condominiums, shopping centers, office buildings or retail uses) or any real property within a one (1) mile radius of all or any portion of the Subdivision, as it may be added to or increased in accordance with Article II of this Declaration.

Section 10.3 - Duration. The Covenants and Restrictions of this Declaration shall run with the land and bind the Subdivision, and shall inure to the benefit of and be enforceable by the Association, the Committee and/or the Owner of any Tract subject to this Declaration, their respective legal representatives, heirs, successors, and assigns (to the extent assignment is permitted them by the terms hereof), for a term of fifty (50) years from the date that this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than

ninety-five percent (95%) of the votes of the Association) to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolition.

Section 10.4 - Amendments. Notwithstanding Section 10.3 hereof, these Covenants and Restrictions may be amended and/or changed in part provided that approval of the City of Midland as to each of such changes shall be obtained before any such changes shall be effective. Such changes and amendments shall be obtained in accordance with the platting procedure of the City of Midland as follows:

(a) during the two (2) year period immediately following the date of recordation of the Declaration, the Declarant may amend or change those Covenants and Restrictions and shall not be required to obtain the consent of the Association or the Members thereof to any such change or amendment;

(b) during the eight (8) year period immediately following the end of the two (2) year period set forth in subparagraph (a) immediately above, the Declarant may amend or change these Covenants and Restrictions with the consent of at least fifty-one percent (51%) of the outstanding votes of the Association; and

(c) from and after the tenth (10th) anniversary of the recordation of this Declaration, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of the outstanding votes of the Association.

Any and all amendments to these Covenants and Restrictions shall be recorded in the office of the County Clerk of Midland County, Texas.

Section 10.5 - Enforcement. Enforcement of these Covenants and Restrictions may be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is injunctive in nature or for recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association, the Committee or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of its right to do so thereafter. The City of Midland, Texas, is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party. Notwithstanding any of the above, if at any time, an Owner of a Tract shall fail to control weeds, unsightly growth and/or debris on such Tract, Declarant or the Association shall have the right to enter upon such Tract and take whatever steps deemed necessary by Declarant or the Association to clean the Tract to Declarant's or the Association's reasonable satisfaction and to bring an Individual Assessment against said Tract in accordance with Section 6.1 hereof, collectible in accordance with Article VI hereof.

Section 10.6 - Validity and Severability. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on or against any Tract. Invalidation of any one or more of these Covenants and Restrictions, or any portion thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these

Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Midland, then such municipal ordinance or regulation shall control.

Section 10.7 - Headings, Gender and Number. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 10.8 - Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.9 - Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by its respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, the correct name and address of such mortgage holder(s) and a request from such mortgage holder(s) to receive such notification.

Section 10.10 - Disputes. Matters of dispute or disagreement between Owners or between Owners and the Committee, or between Owners and the Association or between the Committee and the Association with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board, whose determination with respect to any such dispute shall be final, binding and conclusive upon all interested parties.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, POLO PARK ASSOCIATES, a Texas General Partnership, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended and completely restated.

WITNESS THE EXECUTION HEREOF this 28 day of October, 1985, but effective for all purposes as of April 16, 1982.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: Scott R. Steenson
Scott R. Steenson, Partner

DECLARANT

The Planning and Zoning Commission of the City of Midland, Texas, is the appropriate governmental regulatory body of the City of Midland, Texas, to consent to the amendments, deletions and additions to the Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in the above Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park and upon due review of the above set forth Amendment and Restatement does hereby, as its official act and deed on this _____ day of _____, 1985, consent to all of the terms and provisions of said Declaration as amended and restated by the above Amendment and Restatement.

19514

THE STATE OF TEXAS §
 §
THE COUNTY OF MIDLAND §

SUPPLEMENTAL DECLARATION AND AGREEMENT TO
AMENDMENT AND RESTATEMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR POLO PARK
ANNEXING GARFIELD PLACE, SECTION ONE

This Supplemental Declaration and Agreement to Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park Annexing Garfield Place, Section One, made the 9th day of September, 1986 (the "Supplemental Agreement"), is by and between Polo Park Associates, a Texas general partnership, and The Exeter Corporation, a Texas corporation. Polo Park Associates, which is denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park dated April 16, 1982, and of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, as they were restated in their entirety by document dated October 28, 1985 (said Declaration as restated shall be hereinafter referred to as the "Declaration". Declarant desires to add or annex additional real property to the jurisdiction and scheme of the Declaration. All defined terms set forth in the Declaration are applicable hereto unless amended hereby. The Exeter Corporation is the owner of said additional land and is desirous of placing said land under the jurisdiction and scheme of the Declaration.

THEREFORE, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Article II of the Declaration to add or annex additional real property to the scheme of the Declaration, the undersigned, Polo Park Associates and Exeter do hereby agree as follows, to wit:

W I T N E S S E T H:

WHEREAS, Exeter is the owner of certain real property described as Block 1, Lots 1-16, and Block 2, Lots 1-11, Garfield Place, Section One, an addition to the City of Midland, Midland County, Texas, as recorded in Cabinet C, Page 198 of the Plat Records of Midland County, Texas, and Exeter is desirous of placing said land under the jurisdiction and scheme of the Declaration; and

WHEREAS, Declarant is desirous of annexing said land to the Subdivision (as defined in the Declaration) and placing it under the scheme of the Declaration;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Declarant, Garfield Place, Section One is and shall hereafter be, effective the date first above written, a portion of the Subdivision and may be specifically referred to for convenience of reference as the Garfield Place Portion of the Subdivision. Subject to all of the rights of Declarant set forth in the Declaration to assess the Tract Owners in the Subdivision, the initial monthly Maintenance Assessment payable by each Owner in the Garfield Place Portion of the Subdivision will be \$20.00.

Exeter agrees that as soon after the date of execution of this Supplemental Agreement as may be practicable, it will plant grass and install an underground sprinkler system in the common area or areas set forth in the plat of the Garfield Place Portion of the Subdivision. In addition, Exeter will be responsible for maintaining such common area until Exeter shall have

paid Declarant a total of Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Exeter has made a Fifteen Thousand and No/100 Dollars (\$15,000.00) down payment to Declarant, receipt of which is acknowledged by Declarant, and Exeter has promised to pay an additional Thirty-Five Thousand and No/100 Dollars (\$35,000.00) in conjunction with its sale of the next eighteen Lots in the Garfield Place Portion of the Subdivision following the execution date hereof. Once Declarant receives the sum of \$25,000.00 in the aggregate represented by said \$15,000.00 down payment and the sale of five additional Lots in the Garfield Place Portion, it will assume responsibility for the maintenance of the common areas in the Garfield Place Portion of the Subdivision.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, Polo Park Associates, a Texas General Partnership, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended, modified or extended.

WITNESS THE EXECUTION HEREOF this 9th day of September, 1986.
WAT for
October

POLO PARK ASSOCIATES,
a Texas General Partnership

By: James Lawson
James Lawson, Partner
DECLARANT

THE EXETER CORPORATION

By: W. M. Hickey
W. M. Hickey, President
EXETER

THE STATE OF TEXAS
COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 9th day of September, 1986, by JAMES LAWSON, Partner of Polo Park Associates, a Texas general partnership, on behalf of said partnership.



LAURA CARTER, Notary Public
In and for the State of Texas
My Commission Expires 2-23-88

Laura Carter
Notary Public in and for the
State of Texas
Print Name: LAURA CARTER
My Comm. Expires: 2/23/88

THE STATE OF TEXAS
COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 9th day of September, 1986, by W. M. HICKEY, President of The Exeter Corporation, a Texas corporation, on behalf of said corporation.



LAURA CARTER, Notary Public
In and for the State of Texas
My Commission Expires 2-23-88

Laura Carter
Notary Public in and for the
State of Texas
Print Name: LAURA CARTER
My Comm. Expires: 2/23/88

Filed for Record on the 13 day of Oct A.D. 1986, at 2:15 o'clock P M.
Duly Recorded this the 13 day of Oct A.D. 1986, at 2:20 o'clock P M.

INSTRUMENT NO. 19514

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

By: Diana Lara Deputy

THE STATE OF TEXAS §
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 THE COUNTY OF MIDLAND §

10080

SUPPLEMENTAL DECLARATION AND AGREEMENT TO
 AMENDMENT AND RESTATEMENT OF DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS FOR POLO PARK
 ANNEXING POLO ESTATES

This Supplemental Declaration and Agreement to Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park which is for the purpose of, among other things, annexing Polo Estates, is made this 16th day of May, 1988 (the "Supplemental Agreement and Declaration"), and is by and between Polo Park Associates, a Texas general partnership, ("Polo") and CLR Development Group ("CLR"). Polo is denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park ("Declaration") dated April 16, 1982, and of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, as such Declaration was restated in its entirety by document dated October 28, 1985. Polo as such Declarant desires to add or annex additional real property to the jurisdiction and scheme of the Declaration and to modify the terms of the Declaration. All defined terms set forth in the Declaration are applicable hereto unless amended hereby. CLR and The Roman Catholic Diocese of San Angelo, Texas (the "Diocese") are the owners of said additional real property known as Polo Estates and are desirous of placing said property under the jurisdiction and scheme of the Declaration in accordance with the terms set forth hereafter.

THEREFORE, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo, does hereby change and amend the same by adding new Section 6.3 thereto which is set forth at length hereafter.

And THEREFORE, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Article II of the Declaration to add or annex additional real property to the scheme of the Declaration, the undersigned, Polo and CLR do hereby agree as follows, to wit:

W I T N E S S E T H:

WHEREAS, CLR and the Diocese are the owners of Polo Estates legally described as an addition to the City of Midland, Midland County, Texas, as recorded in Cabinet F, Page 22 of the Plat Records of Midland County, Texas, and CLR is desirous of placing said Polo Estates and the commonly-owned areas thereof under the jurisdiction and scheme of the Declaration; and

WHEREAS, Polo is desirous of annexing said land to the Subdivision (as defined in the Declaration) and placing it under the scheme of the Declaration;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all of Polo, CLR and the Diocese, Polo Estates is and shall hereafter be, effective the date of execution of this Supplemental Declaration and Agreement by the Planning and Zoning Commission of the City of Midland, a portion of the Subdivision and may be specifically referred to for convenience of reference as the "Polo Estates Portion" of the Subdivision. CLR and Polo agree that in the Polo

Estates Portion of the Subdivision, no residence may be constructed which contains less than 2,500 square feet of liveable floor space. Subject to all of the rights of Declarant set forth in the Declaration to assess the Tract Owners in the Subdivision, the initial monthly Maintenance Assessment payable by each Owner in the Polo Estates Portion of the Subdivision will be \$ 20.00 and effective the date of recordation of this document, the commonly owned areas of the Polo Estates Portion of the Subdivision will be maintained in the manner set forth in the Declaration.

In addition, Polo, CLR and the Diocese hereby specifically agree that the Common Areas in the Polo Estates Portion of the Subdivision are hereby conveyed to the Polo Park Homeowners Association established in the Declaration. Polo and CLR agree that no buildings will be constructed or placed within the Common Areas "A" and "B" as set forth in the Plat of said Polo Estates Portion of the Subdivision except upon prior approval of the City Council of the City of Midland, Texas. The specific use to which said Common Area "A" will be devoted shall be as a screening fence and for landscaping. The specific use to which said Common Area "B" will be devoted shall be as a detention basin for storm water runoff as well as for recreation purposes and landscaping. Polo and CLR agree that the Polo Park Homeowners Association will maintain into perpetuity the parkways adjacent to said Common Areas "A" and "B" in the Polo Estates Portion of the Subdivision. Parkway for purposes of this Supplemental Agreement and Declaration are defined as those areas running between the Common Areas and the pavement edges of Bluebird Street and Garfield Street and Newcastle Drive, respectively.

In addition, Declarant hereby modifies and amends the Declaration by adding Section 6.3 thereto which shall read as follows:

6.3 SUBORDINATION OF LIEN FOR ASSESSMENT. The lien and charge hereby created shall be inferior and subordinate to any lien covering any Tract, present or future, granted by the Owner of a Tract to secure the payment of any purchase money indebtedness incurred by such Owner in the purchase of the Tract and/or for the construction and/or permanent financing of any improvements on the Tract.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, Polo hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended, modified or extended.

WITNESS THE EXECUTION HEREOF this 16TH day of May, 1988.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: Deane H. Stoltz
Deane H. Stoltz

POLO

CLR DEVELOPMENT GROUP

By: David T. Clark
David T. Clark

By: James B. Leonard
James B. Leonard

By: William Doss Rogers
William Doss Rogers

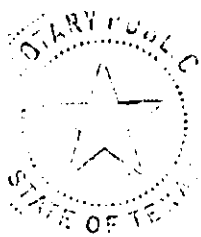
In addition, the undersigned joins herein for the purposes of dedication of the southernmost alley and conveyance of a portion of Common Area "B" within the Polo Estates Portion of the Subdivision.

Michael Pfeiffer
Bishop Michael Pfeiffer, O.M.I.
Roman Catholic Diocese of San Angelo, Texas

THE STATE OF TEXAS
COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 16th day of May, 1988, by DEANE H. STOLTZ, of Polo Park Associates, a Texas general partnership, on behalf of said partnership.



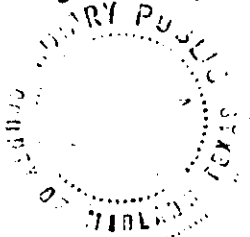
Sue Winkler
Notary Public in and for the
State of Texas
Print Name: SUE WINKLER
My Comm. Expires: 8-24-89

Sue Winkler
Notary Public State of Texas
Commission Expires 8-24-89

THE STATE OF TEXAS
COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 16th day of May, 1988, by DAVID T. CLARK, Partner of CLR Development Corporation, on behalf of said corporation.

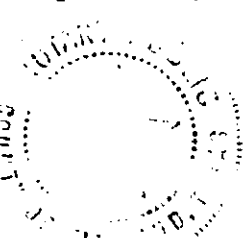


Mary L. Minzenmayer
Notary Public in and for the
State of Texas
Print Name: MARY L. MINZENMAYER
My Comm. Expires: 12-16-89

THE STATE OF TEXAS
COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 16th day of May, 1988, by JAMES B. LEONARD, Partner of CLR Development Corporation, on behalf of said partnership.



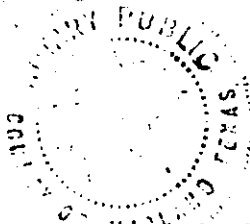
Mary L. Minzenmayer
Notary Public in and for the
State of Texas
Print Name: MARY L. MINZENMAYER
My Comm. Expires: 12-16-89

THE STATE OF TEXAS

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COUNTY OF MIDLAND

This instrument was acknowledged before me on the 16th day of May, 1988, by WILLIAM DOSS ROGERS, Partner of CLR Development Corporation, on behalf of said corporation.



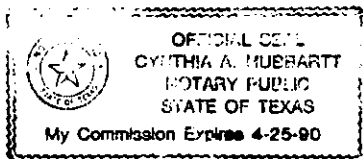
Mary L. Minzenmayer
Notary Public in and for the
State of Texas
Print Name: MARY L. MINZENMAYER
My Comm. Expires: 12-16-89

THE STATE OF TEXAS

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COUNTY OF MIDLAND

This instrument was acknowledged before me on the 23rd day of May, 1988, by BISHOP MICHAEL PFEIFER, O.M.I., on behalf of the Roman Catholic Diocese of San Angelo, Texas.



Cynthia A. Hubbard
Notary Public in and for the
State of Texas
Print Name: CYNTHIA A. HUBBARD
My Comm. Expires: 4-25-90

The Planning and Zoning Commission of the City of Midland, Texas, is the appropriate governmental regulatory body of the City of Midland, Texas, to consent to the amendments, supplements, deletions and additions to the Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in the above Supplemental Declaration and Agreement to Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park Annexing Polo Estates and upon due review of the above set forth Supplemental Declaration does hereby, as its official act and deed on this 16th day of May, 1988, consent to all of the terms and provisions of said Declaration as amended and restated by the above Supplemental Declaration.

TO CERTIFY WHICH WITNESS my hand this 16th day of May, 1988.

PLANNING AND ZONING COMMISSION OF
THE CITY OF MIDLAND, TEXAS

By: Jack Portenight
Chairman

THE STATE OF TEXAS §
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COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 27th day of May, 1988, by the said Jack C. Cartwright, Chairman of the Planning and Zoning Commission of the City of Midland, on behalf of said commission.

Cynthia Kaye -mmts
Notary Public in and for the
State of Texas
Print Name: Cynthia Kaye -mmts
My Comm. Expires: 1-1-90

- 5 -

Filed for Record on the 3 day of June A.D. 1988, at 10:10 o'clock a M.
Duly Recorded this the 3 day of June A.D. 1988, at 10:15 o'clock a M.

INSTRUMENT NO. 10080

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS
By Laurie Bee Deputy

THE STATE OF TEXAS

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THE COUNTY OF MIDLAND

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SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS PERTAINING TO POLO PARK ADDITION,
AN ADDITION TO THE CITY OF MIDLAND

This Supplemental Declaration of Covenants, Conditions and Restrictions Pertaining to Polo Park Addition, an addition to the City of Midland dated the 18th day of ~~June~~ July, 1988 (the "Supplemental Declaration"), is made by Polo Park Associates, a Texas general partnership, which is denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park dated April 16, 1982, and of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, as they were restated in their entirety by document dated October 28, 1985 (said Declaration as restated shall be hereinafter referred to as the "Declaration"). Declarant desires to amend the terms of said Declaration as they pertain to Section Ten (10) of the Subdivision originally platted as Lot One, Block 5, of Polo Park Addition, Section One of record in Volume C, Page 77 of the Deed Plat Records of Midland County, Texas and being replatted as Polo Park Section Ten (10) being a replat of Polo Park, Section One, Lot One, Block Five (the "Replat") which Replat is of record at Volume F, Page 24 of the Deed Plat Records of Midland County, Texas. All defined terms set forth in the Declaration are applicable hereto unless amended hereby. Declarant additionally desires to amend the terms of said Declaration as they pertain to the entire Subdivision.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates, a Texas general partnership, Declarant, amends the same by adding the following additional language pertaining to the Common Areas in the Subdivision:

The 2-foot Common Area (described by metes and bounds on Exhibit A, annexed hereto and made a part hereof) set forth in said Replat adjacent to the 20' alley is hereby adopted as a Common Area within the meaning of the Declaration. Said Common Area will be utilized as a screening fence and will be maintained in accordance with and for the period set forth in the Declaration applicable to Common Areas.

In addition, the undersigned amends the Declaration in the following manner:

Paragraph (f) of Section 8.4 set forth in the Declaration is deleted in its entirety.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, Polo Park Associates, a Texas General Partnership, hereby ratifies and confirms all of the terms conditions and provisions of said Declaration as the same are herein amended.

WITNESS THE EXECUTION HEREOF this 12 day of July, 1988.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: James A. Lawson
James A. Lawson, Attorney-in-Fact
for Deane H. Stoltz, General
Partner

The Planning and Zoning Commission of the City of Midland, Texas, is the appropriate governmental regulatory body of the City of Midland, Texas, to consent to the amendments, supplements, deletions and additions to the Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in the above Supplemental Declaration of Covenants, Conditions and Restrictions Pertaining to Polo Park Addition Section Ten and upon due review of the above set forth Supplemental Declaration does hereby, as its official act and deed on this 18th day of July, 1988, consent to all of the terms and provisions of said Declaration as amended by the above Supplemental Declaration.

TO CERTIFY WHICH WITNESS my hand this 18th day of July, 1988.
J.C., for Ronnie Lynch

PLANNING AND ZONING COMMISSION OF
THE CITY OF MIDLAND, TEXAS

By: Ronnie D. Lynch
Chairman

THE STATE OF TEXAS

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COUNTY OF MIDLAND

This instrument was acknowledged before me on the 12th day of JULY, 1988, by JAMES A. LAWSON, Attorney-in-fact for DEANE H. STOLTZ, General Partner of Polo Park Associates, a Texas general partnership, on behalf of said partnership.



Alan H. Meyers
Notary Public in and for the State
of Texas
Print Name: _____
My Comm. Expires: _____

Alan H. Meyers
Notary Public State of Texas
My Commission Expires
July 6, 1989

THE STATE OF TEXAS

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COUNTY OF MIDLAND

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This instrument was acknowledged before me on the 19th
day of July, 1988, by the said RONALD D. LYNCH,
Chairman of the Planning and Zoning Commission of the City of
Midland, on behalf of said commission.

Nancy H. Watts
Notary Public in and for the State
of Texas
Print Name: NANCY H. WATTS
My Comm. Expires: 8-19-89



NANCY H. WATTS
Notary Public, State of Texas
My Commission Expires Aug. 19, 1989

EXHIBIT "A"
COMMON AREA, POLO PARK, SECTION 10

FIELD NOTES OF A 0.064 ACRE TRACT OF LAND OUT OF THE SW/4 OF SECTION 3,
BLOCK "X", H.P. HILLIARD SURVEY, MIDLAND COUNTY, TEXAS:

BEGINNING at a 1/2-inch iron rod located in the southwest quarter of Section 3,
Block "X", H.P. Hilliard Survey, Midland County, Texas, said rod being in the
eastern boundary of Polo Park - Section III as recorded in Cabinet "C", Page 179
of the Midland County Plat Records, for the southwest corner this tract, from
which the southwest corner of said Section 3 bears S 15° 06' 52" E, 643.5 feet
and S 74° 53' 08" W, 818.74 feet;

THENCE N 15° 06' 52" W, along the eastern boundary of said Polo Park - Section
III, 405.84 feet to a 1/2-inch iron rod for an internal corner this tract;

THENCE N 49° 50' 36" W, along the eastern boundary of said Polo Park - Section
III, 47.87 feet to a 1/2-inch iron rod in the northeast corner of said Polo Park
Section III and the northwest corner of Lot 1, Block 5, Polo Park - Section I as
recorded in Cabinet "C", Page 77 of the Midland County Plat Records, and in the
curved southern boundary of Castleford Road for the northwest corner this tract;

THENCE northeasterly along the curved southern boundary of Castleford Road and
the northern boundary of said Lot 1, Block 5, Polo Park - Section I, Delta Angle
0° 08' 14" left, Radius = 835.00 feet, Chord Bearing = N 48° 48' 14" W, Chord
Distance 2.0 feet, Arc length is 2.0 feet to a 1/2-inch iron rod for the most
northerly northeast corner this tract;

THENCE S 49° 50' 36" E, along the western boundary of a proposed 20 foot alley,
48.46 feet to a 1/2" iron rod for an external corner this tract;

THENCE S 15° 06' 52" E, along the said western boundary of a proposed 20 foot
alley, 404.46 feet to a 1/2 inch iron rod for an internal corner this tract;

THENCE N 74° 53' 08" W along the southern boundary of a proposed 20 foot alley,
941.10 feet to a 1/2 inch iron rod in the western boundary of Polo Parkway for
the most easterly northeast corner this tract;

THENCE S 11° 17' 53" E, along the western boundary of Polo Parkway, 2.0 feet to
a 1/2-inch iron rod for the southeast corner this tract;

THENCE S 74° 53' 08" W, 943.10 feet to the place of beginning and containing
0.064 acres of land.

Filed for Record on the 27 day of July A.D. 1988, at 10:30 clock A.M.

Duly Recorded this the 27 day of July A.D. 1988, at 10:30 clock A.M.

INSTRUMENT NO. 13481

ROSENELE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

By [Signature], Deputy

16074

THE STATE OF TEXAS §
 §
 THE COUNTY OF MIDLAND §

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS
 AND RESTRICTIONS FOR POLO PARK ESTABLISHING PENALTIES
 AND ENFORCEMENT PROCEDURES FOR FAILURE TO PAY ASSESSMENTS

This Supplemental Declaration of Covenants, Conditions and Restrictions for Polo Park Establishing Penalties and Enforcement Procedures for Failure to Pay Assessments made as of the 30th day of August, 1990 (the "Supplemental Declaration"), is made by Polo Park Associates, a Texas general partnership ("Declarant"). Polo Park Associates is the Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park dated April 16, 1982, and of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, as they were restated in their entirety by document dated as of October 28, 1985 and of record at Volume 783, Page 844 of the Deed Records of Midland County, Texas (said Declaration as restated shall be hereinafter referred to as the "Declaration"). Declarant desires to amend the Declaration in order to provide additional incentives for Owners in the Subdivision to pay their respective assessments as described in Article VI of the Declaration and to provide both Declarant and the Homeowners Association of Polo Park Subdivision with additional means to enforce the timely payment of such assessments. For purposes of this Supplemental Declaration, the defined terms used herein unless established or modified hereby shall be the defined terms set forth in the Declaration.

THEREFORE, pursuant to and in exercise of the rights reserved to Declarant to amend the Declaration as set forth in Section 10.4 of the Declaration, and Declarant having the consent of at least fifty-one percent (51%) of the outstanding votes of the Association, Declarant does hereby amend the Declaration in the following particulars, to-wit:

W I T N E S S E T H:

WHEREAS, in order to maintain the common areas within the Subdivision in proper manner and in the best interest of all residents thereof, it is necessary that the monthly individual assessments be collected in timely fashion so that the income to the Board of the Homeowners Association or Declarant, as applicable, is not interrupted, and

WHEREAS, it has been Declarant's experience that not all Owners of tracts in the Subdivision maintain said assessments in a current and paid status, and

WHEREAS, such failure is a detriment to the other Owners in the Subdivision who do pay their individual assessments in timely fashion and

WHEREAS, it is the intention of this Supplemental Declaration to provide reasonable additional incentives for Owners to pay their individual assessments in timely fashion;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT in amendment of the Declaration in part, Declarant does hereby delete those provisions set forth therein as Sections 6.07 through 6.09, both inclusive, and does hereby replace them with the following:

Section 6.7 - Date of Commencement of Assessments:

Due Dates. The Maintenance Assessments shall commence to be levied on the date fixed by the Board for such commencement. The Board or Declarant, as applicable, may prescribe from time to time that the Maintenance Assessments are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board or Declarant, as applicable, shall prescribe the appropriate due dates. All Maintenance Assessments or proportionate parts thereof shall be collected in advance. The due date or dates of any Special Assessment or Individual Assessment under Sections 6.3 and 6.4 hereof, shall be fixed in the resolution authorizing any such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the types of assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Maintenance Assessments, the Owner shall be entitled to notice thereof provided no more often than on an annual basis. In addition, in the case of Maintenance Assessments, the written notice prescribed herein shall provide whether such assessments are to be collected on an annual, semi-annual, quarter-annual or monthly basis.

Section 6.8 - Duties of the Board or Declarant Regarding Collection of Assessments.

A. The Board or Declarant, as applicable, shall maintain a roster of the Tracts, the assessments applicable to each, the due date of each of such assessments, and whether any of such assessments is in default, which roster be kept in the offices of Declarant or the Association.

B. The Board or Declarant, as applicable, shall, upon reasonable demand, furnish to any Owner originally liable for any assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board or Declarant, as applicable, for the issuance of such a certificate.

Section 6.9 - Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law (which shall be the "indicated rate ceiling" within the meaning of Article 5069-1.04, Texas Revised Civil Statutes) plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 hereof on the Tract or Tracts of the non-paying Owner and may be enforced at law or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. In addition to the above, if an Owner shall fail to pay an assessment within 30 days from the due date of same, (the due date for monthly assessments shall always be on the first of the month to which the assessment applies) the Board or Declarant, as applicable, shall be entitled to (i) withdraw all voting and other privileges from the Owner whose assessment or assessments are past due hereunder until all assessments, penalties and interest hereunder on the assessments shall be paid in full by the Owner, and (ii) for each month that a given assessment shall be past due add on an even increasing surcharge computed as follows:

For the first month that the assessment shall be past due the surcharge shall equal the amount of the assessment. For the second month, the additional surcharge shall be double the amount of the assessment. For the third month, the additional surcharge shall be triple the amount of the past due

assessment, and so on with like increases until the end of the first year that the assessment shall be past due. After the first year, the past due assessment shall, in addition to the interest prescribed hereunder shall accrue additional monthly surcharges thereafter in the amount of double the amount of the original assessment until the full amount of the past due assessment together with all other sums which are entitled to be charged to the Owners hereunder shall have been paid in full.

To illustrate the operation of this Section, an example of a past due assessment in the original amount of \$10.00 will be used:

It shall accrue, without regard to interest and other penalties hereunder, surcharges as follows:

PastDue Mo.	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>
Surcharge	\$10	\$20	\$30	\$40	\$50	\$60	\$70	\$80	\$90	\$100	\$110	\$120	\$20

After 13 months the total amount of surcharges attributable to the original past due assessment would amount to \$800.00 and if continued to be unpaid would be increased by \$20.00 per month until the assessment and all charges attributable thereto were to be paid in full.

Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

Section 6.10 - Grace Period. The intent of this Supplement to the Declaration is that it shall be fully applicable to Owners in the Subdivision who are past due in the payment of their assessments on the date of execution of this Supplemental Declaration. In order to ensure fairness in the imposition of the additional remedies for collection of assessments, all Owners who are past due shall have 30 days from the date of recordation of this Supplemental Declaration to pay said assessments up to a current status. After said 30 day period, all remedies hereunder shall be available to the Board or Declarant, as applicable.

In addition to all of the above, any time that the term "Maintenance Assessment" shall appear in the Declaration, it is hereby deleted and replaced with the term "Monthly Homeowners' Dues".

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, Polo Park Associates, a Texas General Partnership, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended, modified or extended.

WITNESS THE EXECUTION HEREOF this 30th day of August, 1990.

POLO PARK ASSOCIATES,
a Texas General Partnership

By: James A. Lawson
James A. Lawson
Agent and Attorney in Fact

DECLARANT

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 30 day of August, 1990, by JAMES A. LAWSON, of Polo Park Associates, a Texas general partnership, on behalf of said partnership.

Notary's Commission Expires:
10-25-93



Patty Moore
Notary Public, State of Texas
Notary's Printed Name:
PATTY MOORE

The Planning and Zoning Commission of the City of Midland, Texas, is the appropriate governmental regulatory body of the City of Midland, Texas, to consent to the amendments, deletions and additions to the Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in the above Supplemental Declaration and upon due review of the above set forth Supplemental Declaration does hereby, as its official act and deed, by and through its duly authorized and empowered officer, on this ____ day of ____, 1990, consent to all of the terms and provisions of said Declaration as supplemented by the above Supplemental Declaration.

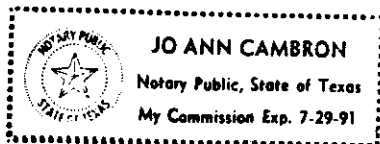
TO CERTIFY WHICH WITNESS my hand this 17th day of September, 1990.

PLANNING AND ZONING COMMISSION
OF
THE CITY OF MIDLAND, TEXAS
By: Mark Wellen
Vice
Chairman

STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 17th day of September, 1990, by the said Mark Wellen, Vice Chairman of the Planning and Zoning Commission of the City of Midland, Texas, on behalf of said commission.

Notary's Commission Expires:
7-29-91



Jo Ann Cambron
Notary Public, State of Texas
Notary's Printed Name:
Jo Ann Cambron

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Filed for Record on the 19 day of September, A.D. 19 90, at 11:05 o'clock A M.
Duly Recorded this the 19 day of September, A.D. 19 90, at 11:19 o'clock A M.

INSTRUMENT NO. 16074

ROSENELE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS
By: Heather L. Cherry, Deputy

VOL 815 PAGE 210
THE STATE OF TEXAS

COUNTY OF MIDLAND

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SUPPLEMENTAL DECLARATION AND AGREEMENT TO
AMENDMENT AND RESTATEMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR POLO PARK
ANNEXING POLO ESTATES SECTION 2

This Supplemental Declaration and Agreement to Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park which is for the purposes of, among other things, annexing Polo Estates Section 2, is made this 25th day of February, 1991 (the "Supplemental Agreement and Declaration"), and is by and between Polo Park Associates, a Texas general partnership, ("Polo") and James B. Leonard. Polo is denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park ("Declaration") dated April 16, 1982, and of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, as such Declaration was restated in its entirety by document dated October 28, 1985. Polo as such Declarant desires to add or annex additional real property to the jurisdiction and scheme of the Declaration and to modify the terms of the Declaration. All defined terms set forth in the Declaration are applicable hereto unless amended hereby. James B. Leonard is the owner of said additional real property known as Polo Estates Section 2 and is desirous of placing said property under the jurisdiction and scheme of the Declaration in accordance with the terms set forth hereafter.

THEREFORE, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo, does hereby change and amend the same by adding new Section 6.3 thereto which is set forth at length hereafter.

And THEREFORE, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Article II of the Declaration to add or annex additional real property to the scheme of the Declaration, the undersigned, Polo and James B. Leonard do hereby agree as follows, to wit:

W I T N E S S E T H:

WHEREAS, James B. Leonard is the owner of Polo Estates Section 2 legally described as an addition to the City of Midland, Midland County, Texas, as recorded in Cabin E, Page 18 of the Plat Records of Midland County, Texas, and James B. Leonard is desirous of placing said Polo Estates Section 2 and the commonly-owned areas thereof under the jurisdiction and scheme of the Declaration; and

WHEREAS, Polo is desirous of annexing said land to the Subdivision (as defined in the Declaration) and placing it under the scheme of the Declaration;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Polo and James B. Leonard, Polo Estates Section 2 is and shall hereafter be, effective the date of execution of this Supplemental Declaration and Agreement by the Planning and Zoning Commission of the City of Midland, a portion of the Subdivision and may be specifically referred to for convenience of reference as the "Polo Estates Section 2 Portion" of the Subdivision. James B. Leonard and Polo agree that in the Polo Estates Section 2 Portion of the Subdivision, no residence may be constructed which contains less than 2,500 square feet of livable floor space. Subject to all of the rights of Declarant set forth in the Declaration to assess the Tract Owners in the Subdivision, the initial monthly Maintenance Assessment payable by each Owner in the Polo Estates Section 2 Portion of the Subdivision will be \$25.00 and effective the date of recordation of this document, the commonly owned areas of the Polo Estates Section 2 Portion of the Subdivision will be maintained in the manner set forth in the Declaration.

In addition, Polo and James B. Leonard hereby specifically agree that the

Common Area in the Polo Estates Section 2 Portion of the Subdivision are hereby conveyed to the Polo Park Homeowners Association established in the Declaration. Polo and James B. Leonard agree that no buildings will be constructed or placed within the Common Area "A" as set forth in the Plat of said Polo Estates Section 2 Portion of the Subdivision except upon prior approval of the City Council of the City of Midland, Texas. The specific use to which said Common Area "A" will be devoted shall be as a detention basin for storm water runoff as well as for landscaping. Polo and James B. Leonard agree that the Polo Park Homeowners Association will maintain into perpetuity the parkway adjacent to said Common Area in the Polo Estates Section 2 Portion of the Subdivision. "Parkway" for purposes of this Supplemental Agreement and Declaration is defined as the area running between the Common Area and the pavement edge of Knights Place Court as set forth on the Plat

In addition, Declarant hereby modifies and amends the Declaration by adding Section 6.3 thereto which shall be applicable to Polo Estates Section 2 Portion of the subdivision only and which shall read as follows:

6.3 SUBORDINATION OF LIEN FOR ASSESSMENT. The lien and charge hereby created shall be inferior and subordinate to any lien covering any Tract, present or future, granted by the Owner of a Tract to secure the payment of any purchase money indebtedness incurred by such Owner in the purchase of the Tract and/or for the construction and/or permanent financing of any improvements on the Tract.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, Polo hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended, modified or extended.

WITNESS THE EXECUTION HEREOF this 25th day of February, 1991.

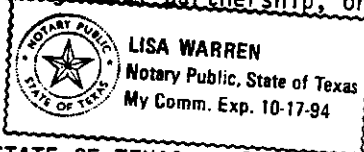
POLO PARK ASSOCIATES
a Texas General Partnership

BY: [Signature]
Deane H. Stoltz, Partner

[Signature]
JAMES B. LEONARD

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 25th day of February, 1991, by DEANE H. STOLTZ, Partner, of Polo Park Association, a Texas general partnership, on behalf of said partnership.



[Signature]
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledge before me on the 9th day of April, 1991 by JAMES B. LEONARD.

[Signature]
NOTARY PUBLIC, STATE OF TEXAS

The Planning and Zoning Commission of the City of Midland, Texas, is the appropriate governmental regulatory body of the City of Midland, Texas, to consent to the amendments, supplements, deletions and additions to the

Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in the above Supplemental Declaration and Agreement to Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park Annexing Polo Estates Section 2 and upon due review of the above set forth Supplemental Declaration does hereby, as its official act and deed on this 3rd day of June, 1991, consent to all of the terms and provisions of said Declaration as amended and restated by the above Supplemental Declaration.

TO CERTIFY WHICH WITNESS my hand this 3rd day of JUNE, 1991.

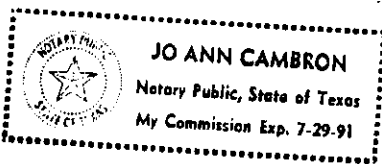
PLANNING AND ZONING COMMISSION OF
THE CITY OF MIDLAND, TEXAS

BY: Mark Wellen
Chairman

THE STATE OF TEXAS §
COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 3rd day of June, 1991, by the said Mark Wellen, Chairman of the Planning and Zoning Commission of the City of Midland, on behalf of said commission.

Jo Ann Cambron
NOTARY PUBLIC, STATE OF TEXAS



Filed for Record on the 18 day of June A.D. 1991, at 10:50 o'clock a.M.
Duly Recorded this the 18 day of June A.D. 1991, at 10:55 o'clock a.M.

INSTRUMENT NO. 11118

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS
By Laurie Sue Deputy

STATE OF TEXAS

6856

COUNTY OF MIDLAND

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AMENDMENT AND RESTATEMENT OF
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
POLO PARK

The undersigned, Polo Park Associates, formerly a Texas General Partnership, denominated as Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park which Declaration is dated April 16, 1982 and is of record in Vol. 720, Page 119 of the Deed Records of Midland County, Texas, desires, in contemplation of the incorporation of the Polo Park Homeowner's Association, to make substantial changes in the terms and provisions thereof, and considers a complete restatement thereof to be the most expedient method or manner in which to accomplish its purposes.

Therefore, pursuant to and in exercise of the rights reserved to the undersigned in and under subparagraph (a) of Section 10.4 of Article X of said Declaration to change and amend the same, in whole or in part, the undersigned, Polo Park Associates does hereby change and amend the same by amending various provisions thereof, by deleting certain provisions thereof, by adding certain new provisions thereto and by restating said Declaration, as so changed, supplemented and amended, in its entirety, which restatement is as follows:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this 16th day of April, 1992, by POLO PARK ASSOCIATES (hereinafter referred to as "Declarant") effective for all purposes as of April 16, 1982 with the full approval and consent of Polo Park Homeowner's Association which consent is appended hereto:

WITNESSETH:

WHEREAS, Declarant is the developer of certain real property located and situated in Midland County, Texas described as Polo Park Section I of record at Plat Cabinet C, Page 77; Polo Park Section II of record at Plat Cabinet C, Page 147; Polo Park Section IV of record at Plat Cabinet C, Page 193; Garfield Place Section One of record at Plat Cabinet C, Page 198; Polo Park Section 6 of record at Plat Cabinet D, Page 356; Polo Park Section 7 of record at Plat Cabinet D, Page 373; Polo Park Section 8 of record at Plat Cabinet D, Page 376; Polo Park Section 10 of record at Plat Cabinet F, Page 24; Polo Park Section 11 of record at Plat Cabinet E, Page 30; Polo Estates of record at Plat Cabinet F, Page 22; and Polo Estates Section Two of record at Plat Cabinet E, Page 18; (all of the references to Plat Cabinets are the Plat Cabinets maintained in the offices of the Midland County Clerk, Midland County, Texas), which plats represent all of the plattings and/or annexations of the community unit development known as "Polo Park" effective as of the dates of their respective plattings and/or annexations. Declarant desires to take advantage of the presently-existing unique geographical features of the said real property and proposes to establish and implement highly sophisticated plans for residential living, recreation and aesthetic considerations with respect thereto in those portions of said real property dedicated to residential development (which portions shall hereinafter in the aggregate be referred to as the "Subdivision"). In view of the various unusual and uncommon features of Declarant's long-range plans, Declarant desires to impose these restrictions on the Subdivision and yet retain reasonable flexibility to respond to changing or unforeseen circumstances so as to control and maintain the first-class quality and distinction of the Subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT the property situated in the Subdivision is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to herein as "the Covenants and Restrictions") hereinafter set forth:

ARTICLE I.

CONCEPTS AND DEFINITIONS

The following words, when used in this Declaration or any further Supplemental Declaration (unless the context shall otherwise clearly indicate or prohibit), shall have the following respective concepts and meanings:

(a) "Association" shall mean and refer to the entity which will have the power, duty and responsibility of maintaining and administering the Common Areas and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter prescribed. The Association, as of the date of recordation of this Declaration and continuing thereafter for an indefinite period of time, exists as an unincorporated association. At a point in time deemed appropriate by the Declarant but prior to the tenth anniversary of the recordation of this Declaration, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas (under the name "Polo Park Homeowners Association, Inc." or a similar or comparable name, depending upon the then-existing availability of such corporate name(s)) for the purposes set forth herein.

(b) "Subdivision" in addition to its meaning as previously defined herein, shall mean and refer to any additions to such residential real property, which is or are subject to this Declaration of any Supplemental Declaration prepared and filed of record pursuant to the provisions of Article II hereof.

(c) "Common Areas" shall mean and refer to any and all areas of land within the Subdivision which are known, described or designated as common green, common areas, parks, recreational easements, boulevards, greenbelts or open spaces on any recorded plat of the Subdivision, including but not limited to those specifically mentioned and cited above, or which are intended for or devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. Specific mention of certain of the Common Areas and Covenants and Restrictions with respect thereto are made as follows:

(1) The Common Area in Section Two of the Subdivision, sometimes known as "Common Area No. 5," in the records relating to subdivisions maintained by the City of Midland, Texas, will, in accordance with and subject to all of the covenants, conditions and restrictions contained herein which are applicable to Common Areas, be occupied by a clubhouse, together with swimming pool and one tennis court, with immediately adjacent paved parking area. Pedestrian ingress and egress to and from said Common Area No. 5 shall be by means of that certain ten-foot wide access easement from Devonshire Court (as set forth on the plat of the Subdivision) to said Common Area No. 5.

(2) No buildings will be constructed or placed within the Common Areas "A" and "B" as described in the plat of Polo Estates Portion of the Subdivision except upon prior approval of the City of Midland, Texas. Common Area "A" of the Polo Estates Common Area will be devoted to use

as a screening fence and for landscaping. The specific use to which Common Area "B" will be devoted shall be as a detention basin for storm water runoff, as well as for recreational purposes and landscaping. The Association will maintain the parkways adjacent to said Common Areas "A" and "B" in the Polo Estates Portion of the Subdivision for purposes of parkways. Parkway, for purposes of this paragraph, are defined as "those areas running between the Common Areas and the pavement edges of Bluebird Street and Garfield Street and Newcastle Drive, respectively.

(3) The two foot Common Area which is described as Common Area, Polo Park, Section Ten and which is adjacent to the twenty foot alley as a Common Area, will be utilized as a screening fence.

Declarant proposes to hold record title to the Common Areas, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Areas, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant but prior to the tenth anniversary of the recordation of this Declaration) after the Association has been incorporated, record title to the Common Areas will be transferred from the Declarant to the Association free and clear of any and all liens or other encumbrances by covenants of general warranty. Declarant reserves the right to execute any open space declarations applicable to the Common Areas which may be permitted by law in order to reduce property taxes.

(d) "Tract" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or plat(s) of the Subdivision, as amended from time to time, which is designated as a lot or tract therein and which is or will be improved with a single-family residential dwelling (which term includes detached single family residences and townhouses) or duplex in conformity with any building restrictions applicable thereto.

(e) "Owner" shall mean and refer to each and every person or business entity who is a record owner of a fee or undivided fee interest in any Tract subject to these Covenants and Restrictions; however, the word "Owner" shall not include person(s) or entity(ies) who hold a bona fide lien or interest in a Tract as a security merely for the performance of an obligation.

(f) "Member" shall mean and refer to an Owner of a Tract.

(g) "Declarant" as previously defined herein, shall mean and refer to Polo Park Associates, and its successors and assigns, if any. No person or entity, merely by purchasing one or more Tracts from Polo Park Associates, or its successors and assigns in the ordinary course of its business shall be considered to be "Declarant".

ARTICLE II.

ADDITIONS TO SUBDIVISION SUBJECT TO THIS DECLARATION

Subdivision. Additional land may become subject to this Declaration in any of the following manners, to-wit:

(a) Declarant may add or annex additional real property (from time to time and at any time) to the scheme of this Declaration by filing of record in Midland County, Texas a Supplemental Declaration of Covenants, Conditions and Restrictions or other amendatory document which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property, PROVIDED, HOWEVER, that any

such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the concepts and purposes of this Declaration;

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation proposal must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association;

(c) Any additions made pursuant to paragraphs (a) and (b) of this Article II, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association and the Architectural Control Committee to the properties added and correspondingly subject the properties added to the Covenants and Restrictions contained in this Declaration or any Supplementary Declaration thereto; and

(d) Upon a merger or consolidation of the Association (as an incorporated entity) 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 such a merger. The surviving or consolidated association may administer the Covenants and Restrictions established by this Declaration for the Subdivision together with the covenants and restrictions established upon any other properties over which it would then have jurisdiction as one scheme.

ARTICLE III.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1 - Membership. Every owner of a Tract shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing.

Section 3.2 - Voting Rights. The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Tract Owners other than Class B Members. Class A Members shall be entitled to one vote for each Tract in which they hold the interest required for membership. When more than one person holds such interest or interests in any Tract, all such persons shall be Members, and the vote for such Tract shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Tract.

CLASS B: Class B Members shall consist of the Declarant and Tract Owners who are engaged in the process of constructing residential dwellings on their respective Tracts for sale to consumers. A Class B Member (excluding the Declarant) shall be entitled to one vote for each Tract owned. The Declarant alone, however, shall be entitled to six votes for each Tract it owns or in which it owns a lien of whatever kind or character; provided, however, that after April 16, 1992, Declarant shall be entitled to one vote only for each Tract that it owns or in which it owns a lien of whatever kind or character. The Class B Membership shall cease, and each Class B Member shall become a Class A Member:

(i) when the total number of votes outstanding in the Class A Membership is eight times greater than the total number of votes outstanding in the Class B Membership; or

(ii) on the tenth anniversary date of the lawful commencement date of the Association as an incorporated entity,

whichever occurs first in time.

Notwithstanding the aforementioned voting rights within the Association and consistent with the provisions of Article X hereinafter, until:

(a) The Declarant no longer owns:

(i) record title to any Tract; and

(ii) a lien interest in any Tract; and

(iii) title to any adjoining acreage intended by Declarant to be developed as an additional section or phase of the Subdivision; or

(b) The tenth anniversary of April 16, 1982,

whichever occurs first in time, neither the Association nor the Members shall take any action or inaction with respect to any matter whatsoever without the consent and approval of the Declarant, which consent shall not be unreasonably withheld or delayed.

Section 3.3 - Quorum Notice and Voting Requirements.

(a) Subject to the provisions of Sections 3.2, 4.3, and 10.4 hereof, as well as paragraph (c) of this Section, any action upon which the Members shall be required to vote shall require the assent of the majority of the Members of the Association voting in person or by proxy with respect to each matter requiring a vote of each Member at a meeting duly called for such purposes, written notice of which and a proxy pertaining to which shall be given to all Members not less than thirty days nor more than sixty days in advance and shall set forth the purpose or purposes of such meeting. Any proxy sent to the Members shall be deemed received by each member three days after it is mailed. If it is not returned to the Association within ten days of its receipt by the Member, each Member who fails to return it and who does not attend the meeting to vote in person will be deemed to have voted at the noticed meeting in favor of the matter or matters proposed by the Association.

(b) The quorum required for any action referred to in paragraph (a) of this Section shall be as follows:

At the first meeting called, the presence at the meeting of Members, or of legitimate proxies, entitled to cast sixty percent of all of the votes of the Association shall constitute a quorum. If, however, such a quorum is not present at the first meeting, an additional meeting or meetings may be called for the same purposes of such first meeting, subject to the notice requirement hereinabove set forth, and the required quorum at each such subsequent meeting shall be one-half of the required quorum for the preceding meeting; provided, however, that no such subsequent meeting shall be held more than ninety days following the first meeting.

(c) As an alternative to the procedure set forth above, but subject to the provisions of Section 3.2 above, any action referred to in paragraph (a) of this Section 3.3 may be taken with the assent given in writing and signed by Members who collectively hold or control more than sixty percent of the outstanding votes of the Association.

(d) Except as specifically set forth in paragraph (a) of this Section 3.3 or elsewhere in this Declaration:

(i) during the period of time that the Association is unincorporated, the Declarant shall have the right and option to prescribe reasonable procedures for meetings (if any) of the Members; and

(ii) subsequent to incorporation, notice, voting and quorum requirements for the Association shall be consistent with its Articles of Incorporation and Bylaws, the original of which Bylaws shall be set forth at length in this Declaration, as the same may be amended from time to time.

(e) Notwithstanding anything to the contrary contained herein, should the Association in a given year wish to make any capital expenditure which amounts to in excess of twenty-five percent (25%) of the Association's budget for that year, fifty-one percent (51%) of the Members voting at a duly called meeting in person or by proxy must vote in favor of such expenditure.

ARTICLE IV.

PROPERTY RIGHTS IN THE COMMON AREAS

Section 4.1 - Members' Easements of Enjoyment. Subject to the provisions of Section 4.3 hereof, every Member and each individual who resides with a Member in a residence located on a Tract shall have a right and easement of use, recreation and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to each respective Tract, PROVIDED, HOWEVER, such easement shall not give such person (excluding the Declarant) the right to make alterations, additions or improvements to the Common Areas. Such easements shall be limited to Members and individuals who reside with Members in a residence located on a Tract. No Member shall do anything or permit anything to be done on or in the Common Areas which would violate any applicable public law or zoning ordinance or which would result in the cancellation of or increase in any insurance carried by the Association or which would result in the violation of any law or any rule or regulation promulgated by the Board. Any such violation will subject the Member or individual residing with him who perpetrates such violation to the Special Individual Assessment pursuant to Article VI hereof. No alcoholic beverages may be sold on the Common Areas, but Members will be entitled to carry alcoholic beverages onto the Common Areas for their own consumption.

Section 4.2 - Title to the Common Properties. The Declarant will hold record title to the Common Areas for an indefinite period of time, subject to Article I paragraph (c) hereof, and subject to the easements set forth in Section 4.1 above. The Declarant shall have the right and option (without the joinder and consent of any person or entity, save and except any consent, joinder or approval required by the City of Midland) to encumber, mortgage, alter, improve, landscape and maintain the Common Areas, provided that Declarant fully and timely complies with any and all requirements of the City of Midland with respect thereto. The Association (as an incorporated entity) will, once this conveyance is made by Declarant to the Association in accordance hereunder, hold title to the Common Areas and no Member or Owner will have a direct or undivided ownership interest in the Common Areas.

Section 4.3 - Extent of Members' Easements. The rights and easements of use, recreation and enjoyment created hereby shall be subject to the following:

(a) The right of the Declarant (during the time the Association is unincorporated) or the Association (as an incorporated entity) to prescribe reasonable regulations governing the use, operation and maintenance of the Common Areas by the Members. The Board shall have the powers set forth in Section 5.2 of Article V with respect to enforcement of such rules and regulations. A Member who

shall be determined by the Board or by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees;

(b) Liens or mortgages placed against all or any portion of the Common Areas with respect to monies borrowed by the Declarant to develop and improve the Common Areas or by the Association (as an incorporated entity) to improve or maintain the Common Areas;

(c) The right of the Declarant or the Association to enter into and execute contracts with any party (including, without limitation, the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association and/or this Declaration;

(d) The right of the Declarant or the Association (as an incorporated entity) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(e) The right of the Declarant or the Association to suspend the voting rights of any Member and to suspend the right of any Member to use or enjoy any of the Common Areas for any period during which any assessment against a Tract owned by such Member remains unpaid, and for any period not to exceed sixty days for an infraction of the then-existing rules and regulations for use of the Common Areas; and

(f) Subject to approval by written consent by the Members holding or controlling 50% or more of the outstanding votes of the Association, to dedicate or transfer all or any part of the Common Areas to any municipal corporation, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by such Members.

ARTICLE V.

GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

Section 5.1 - Powers and Duties with Respect to Assessments. The affairs of the Association, whether it is existing as an incorporated or unincorporated entity, shall be conducted by its Board of Directors ("the Board"). The Board, for the benefit of the Association, the Common Areas and the Owners shall provide for and shall pay for out of a fund maintained by it and made up of the Monthly Homeowner's Dues, the Special Assessments and the Individual Assessments provided for in Article VI hereof, the following expenses associated with and related to the Common Areas:

(a) Care, preservation and maintenance of the Common Areas and the furnishing and upkeep of all personal property located in, on and/or affixed to the Common Areas;

(b) Charges for taxes, insurance and utilities (including, but not limited to electricity, gas, water and sewer charges) which pertain to and are related to the Common Areas only;

(c) The services of a person or firm (including affiliates of the Declarant) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by any manager hired by the Board pursuant hereto;

(d) Legal and accounting services; and

(e) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 5.2 - Other Powers and Duties. The Board shall have the following additional rights, powers and duties:

(a) to execute all declarations of ownership for tax assessment purposes with regard to any of the Common Areas owned by the Association as an incorporated entity;

(b) to enter into agreements or contracts with insurance companies, taxing authorities, the holders of first mortgage liens on the individual Tracts, utility companies and companies maintaining security in the Subdivision with respect to:

(i) any taxes or insurance coverage on the Common Areas; and

(ii) utility installation, consumption and service matters.

(c) to borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(d) to enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operations and management of the Association;

(e) to protect or defend the Common Areas from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(f) to make reasonable rules and regulations for the operation of the Common Areas and to amend them from time to time;

(g) subsequent to incorporation, to make available to each Owner within ninety days after the end of each year an annual report of the operations of the Association;

(h) to obtain insurance and use its proceeds in accordance with Article VII hereof;

(i) to enforce the provisions of this Declaration and any rules made hereunder, and in connection therewith, to seek damages from any Owner for violation of such provisions or rules and to enjoin any owner from perpetrating any such violation; and

(j) to establish a policy or policies for use of the Polo Park Clubhouse by Members as well as by non-Members.

Section 5.3 - Liability Limitations. None of (i) the Declarant, its agents or employees or (ii) the Association, its directors, its officers, its agents or its employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof located in the Subdivision or for failure to repair or maintain the same. The Declarant, the Association or any other person, firm or corporation who shall make such repairs or effect such maintenance shall not be liable for any damage or injury to either person or property or other incidental or consequential damages

occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof located in the Subdivision, nor shall any director on the Board be liable to any Member for the performance and discharge of his duties as director on the Board.

Section 5.4 - Reserve Funds. The Board may, in its sole and absolute discretion, establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order better to demonstrate (if deemed appropriate or necessary by the Board) that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE VI

Section 6.1 - Covenant and Lien for Assessments. The Declarant, for each Tract owned by it hereby covenants, and each Owner of a Tract by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to and does hereby covenant and agree to pay to the Association: (1) regular assessments or charges (the "Monthly Homeowner's Dues") discussed at greater length hereinafter; (2) individual special assessments (the "Individual Assessments") which shall be levied against individual Tract Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts or omissions of an individual Owner or the residents of the Tract owned by him. All of such assessments are to be fixed, established and collected from time to time as hereinafter provided. The Monthly Homeowner's Dues and Individual Assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a first and superior charge and lien on the real property covered by this Declaration and shall be a continuing lien upon each Tract against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Tract at the time when the assessment fell due.

Section 6.2 - Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes: (i) of promoting the health, recreation, safety and welfare of the residents of the Subdivision, (ii) for carrying out the duties of the Board as set forth in Article V hereof, (iii) for carrying out the various matters set forth or envisioned herein or in any supplementary Declaration related hereto which are to be accomplished or overseen by the Association, and (iv) for payment of expenses incurred by the Association in connection with zoning, subdivision, platting, building or development requirements of the City of Midland which impact the Subdivision.

Section 6.3 - Basis and Amount of Maintenance Assessments.

A. From and after the original date of commencement of Monthly Homeowner's Dues (when established by the Board) and continuing thereafter until January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the minimum Maintenance Assessments shall be \$10.00 per townhouse, \$10.00 per duplex and \$10.00 per single family residence (other than townhouses), provided such Assessment shall be reasonable in relationship to the amounts needed by the Association to cover its costs for ordinary maintenance.

B. From and after January 1 of the year immediately following the conveyance of the first Tract from Declarant to an Owner, the Board may establish for each calendar year thereafter the maximum Monthly Homeowner's Dues for each Tract, provided that the maximum Monthly Homeowner's Dues for any year may not be increased more than 25% above the maximum Monthly Homeowner's Dues for the calendar year previous thereto unless such an increase is approved by the Owners as provided in Section 3.3 hereof.

C. The Board may subsequently fix the actual Monthly Homeowner's Dues at an amount equal to or less than the maximum Monthly Homeowner's Dues.

Section 6.4 - Individual Assessments. In addition to the Monthly Homeowner's Dues authorized above, the Association may levy an Individual Assessment against a Tract, the Owner of which, through his willful or negligent acts or omissions or those of the other residents of the dwelling on such Tract, shall cause the Association to incur extra costs for repairs and maintenance. Such Individual Assessments shall be for the amount of such extra costs and shall only be levied (a) after the Owner of the Tract is given 10 days written notice by the Association of his obligation to the Association for such extra costs and (b) after such Owner fails to pay such obligation within such 10 day period. The Association may levy an Individual Assessment against the same Owner for as many episodes or events as such Owner shall be responsible for that cause the Association to incur such extra costs.

Section 6.5 - Rate of Assessments. Monthly Homeowner's Dues must be fixed at a uniform rate for all units within each class of residence or housing owned by the Owners (which classes consist of detached single-family residences, townhouses, and duplexes) unless otherwise approved by the Board.

Section 6.6 - Date of Commencement of Assessments; Due Dates. The Monthly Homeowner's Dues shall commence to be levied on the date fixed by the Board for such commencement. The Board or Declarant, as applicable, may prescribe from time to time that the Monthly Homeowner's Dues are to be collected on an annual, semi-annual, quarterly or monthly basis and, accordingly, the Board or Declarant, as applicable, shall prescribe the appropriate due dates. All Monthly Homeowner's Dues or proportionate parts thereof shall be collected in advance. The due date or dates of any Individual Assessment under Section 6.4 hereof, shall be fixed in the resolution authorizing any such assessment. Any assessment shall become delinquent if not paid within 30 days following its due date. At least 60 days prior to the due date of any of the types of assessments described herein, the Board shall deliver or mail to every Owner subject thereto written notice of the assessment, its amount or rate and its due date, provided however, that in the case of Monthly Homeowner's Dues, the Owner shall be entitled to notice thereof provided no more often than on an annual basis.

Section 6.7 - Duties of the Board Regarding Collection of Assessments.

A. The Board or Declarant, as applicable, shall maintain a roster of the Tracts, the Monthly Homeowner's Dues applicable to each, the due date of each of such Monthly Homeowner's Dues, and whether any of such Monthly Homeowner's Dues is in default, which roster shall be kept in the offices of Declarant or the Association.

B. The Board or Declarant, as applicable, shall, upon reasonable demand, furnish to any Owner originally liable for any assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board or Declarant, as applicable, for the issuance of such a certificate.

Section 6.8 - Effect of Non-Payment of Monthly Homeowner's Dues and Other Accounts. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, along with interest at the highest rate permitted by law (which shall be the "indicated rate ceiling" within the meaning of Article 5069-1.04, Texas Revised Civil Statutes) plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 hereof on the Tract or Tracts of the non-paying Owner and may be enforced at law or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. In addition to the above, if an Owner shall fail to pay an assessment within 30 days from the due date of same, (the due date for monthly Homeowner's Dues shall always be on the first of the month to which the Monthly Homeowner's Dues applies) the Board or Declarant, as applicable, shall be entitled to (i) withdraw all voting and other privileges from the Owner whose assessment or assessments are past due hereunder until all assessments, penalties and interest hereunder on the

assessments shall be paid in full by the Owner, and (ii) for each month that a given assessment shall be past due add on an even increasing surcharge computed as follows:

For the first month that the Monthly Homeowner's Dues shall be past due the surcharge shall equal the amount of the assessment. For the second month, the additional surcharge shall be double the amount of the assessment. For the third month, the additional surcharge shall be triple the amount of the past due assessment, and so on with like increases until the end of the first year that the assessment shall be past due. After the first year, the past due assessment shall, in addition to the interest prescribed hereunder, accrue additional monthly surcharges thereafter in the amount of double the amount of the original assessment until the full amount of the past due assessment together with all other sums which are entitled to be charged to the Owners hereunder shall have been paid in full.

To illustrate the operation of this Section, an example of a past due assessment in the original amount of \$10.00 will be used:

It shall accrue, without regard to interest and other penalties chargeable hereunder, surcharges as follows:

PastDue	Mo.	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>	<u>11</u>	<u>12</u>	<u>13</u>
Surcharge		\$10	\$20	\$30	\$40	\$50	\$60	\$70	\$80	\$90	\$100	\$110	\$120	\$20

After 13 months the total amount of surcharges attributable to the original past due assessment would amount to \$800.00 and if continued to be unpaid would be increased by \$20.00 per month until the assessment and all charges attributable thereto were to be paid in full.

Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

ARTICLE VII

INSURANCE, REPAIR AND RESTORATION

Section 7.1 - Right to Purchase Insurance. The Board shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Subdivision or Common Areas, any improvements thereon or appurtenant thereto, for the interest of the Association, the Board, the agents, officers and employees of the Association, and of all Members of the Association, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location, and use to the property subject to such insurance. Such insurance may include, but need not be limited to:

- (a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsements in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier;
- (b) Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Owners and Members with respect to the Common Areas; and
- (c) Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of funds.

Section 7.2 - Insurance Proceeds. The Board shall use the net insurance proceeds to repair and replace any damage to or destruction of property, real or personal, covered by such insurance. Any balance for the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion or repair and replacement, shall be retained by the Board as part of a general reserve fund for repair and replacement of the Common Areas.

ARTICLE VIII

USE OF LOTS AND PROPERTIES - PROTECTIVE AND RESTRICTIVE COVENANTS

The Subdivision (and each Tract situated therein) shall be constructed, developed, occupied and used as follows:

Section 8.1 - Residential Lots. All Tracts within the Subdivision shall be used, known and described as residential lots. No building or structure shall be erected, altered, placed or permitted to remain on any Tract other than a single-family dwelling (including detached single family residences) or duplex with, if any, customary and usual structures accessory thereto. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained in the Subdivision, or any part thereof, save and except those related to development, construction and sales purposes of a Class B Member or the Association. This covenant shall be construed as prohibiting the engaging in or practice of any commerce, industry, business, trade or profession within the Subdivision.

Section 8.2 - Duplexes. Each one-story duplex constructed in the Subdivision shall contain a minimum of 1,100 square feet of livable floor space, exclusive of garage, patio or similar spaces, per side, and each two story duplex constructed in the Subdivision shall contain a minimum of 1,500 square feet of livable space, exclusive of garage, patio or similar spaces, per side.

Section 8.3 - Architectural Control Committee. Prior to the construction of improvements on any Tract in the Subdivision, there shall be an Architectural Control Committee, herein for convenience of reference from time to time called "the Committee," which shall be composed of three individuals or business entities, each of whom shall be selected and appointed by the Association each year, at least one of whom shall always be a member of the Board, and each of whom shall be generally familiar with residential and community development design matters and knowledgeable about the concern of Declarant for a high level of taste and design standards within the Subdivision. The Committee shall function as the representative of the Owners of the Tracts for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class community development. The Committee shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Subdivision.

In the event of the death or resignation of any member of the Committee, the Association shall have full authority to designate and appoint a successor to such member of the Committee. No member of the Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to the Declaration.

No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Tract until all plans and specifications and a plot plan have been submitted to and approved in writing by the Committee, or a majority of its members, as to:

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

- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping;
- (iii) location with respect to topography and finished grade elevation and effect of location on use of neighboring Tracts and improvements situated thereon;
- (iv) drainage arrangements; and
- (v) the other standards set forth within this Declaration (and any amendments or supplements hereto or restatements hereof) or as may be set forth within bulletins promulgated by the Committee, or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered to consider and review any all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Tract Owners or the general value of the Subdivision. The Committee shall be entitled to utilize any and all legal means which are available to the Association for enforcement of the Covenants and Restrictions.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. The Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Tract Owner or his designated representative. If found not to be in compliance with the Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with the Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval, a required herein, shall be in writing. If the Committee fails to approve or disapprove such plans and specifications within fifteen days after the date of their submission, then such plans shall be submitted to the Board. If the Board fails to approve or disapprove such plans and specifications within fifteen days, then the approval of such plans by the Committee and Association shall be presumed.

The Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of these Covenants and Restrictions. Although the Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and shall use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by this reference.

Section 8.4 - Specific Use Restrictions. The following restrictions as to the use of each Tract in the Subdivision shall be applicable to each and every type of residence which is authorized by the terms hereof to be constructed, unless otherwise noted:

- (a) Each dwelling shall have attached to it an enclosed garage of the same construction and exterior finish as the rest of the dwelling; provided, however, that duplexes shall have a garage meeting the specifications hereof on each side. Each garage must open to the rear of the Tract unless a specific variation of this use restriction is approved in writing and in advance by the Committee. Each garage shall contain sufficient space to house two conventional automobiles. A port-cochere may be constructed on a Tract but only in addition to a garage meeting the requirements hereof and only with the advance written approval of the Committee with respect thereto.

(b) The types of residences which may be constructed on Tracts in the Subdivision but which may not exceed two stories in height consist of detached single family residences, townhouses, and duplexes. If the Tract upon which the residence is to be built is less than 60 feet in width, then any single family residence constructed thereon, must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,500 square feet of such livable space if one story and 1,800 square feet of such livable space if two stories. If the Tract upon which the residence is to be built is 60 feet or wider in width, then any single family residence constructed thereon other than a duplex must contain a minimum of the following livable floor space, exclusive of any garage, patio or similar spaces: 1,800 square feet of such livable space if one story and 2,200 square feet of such livable space if two stories, of which not less than 1,450 square feet of such space must be contained in the ground floor. The requirements for livable floor space for duplexes are set forth in Section 8.2 hereof. No Tract upon which a duplex is to be constructed shall be less than 60 feet in width. In addition, the types of residences which may be constructed on Tracts in the Subdivision but which may not exceed two stories in height consist of detached single family residences only. Any such single family residence constructed on a Tract in the Subdivision must contain a minimum of 2,200 square feet of livable floor space, exclusive of any garage, patio or similar spaces. If such single family residence shall be two stories, not less than 1,800 square feet of livable floor space must be contained in the ground floor.

(c) All residences constructed on Tracts in the Subdivision shall be of no less than seventy-five percent brick veneer in their entirety and such brick veneer shall extend from grade level to the eave or roof line of the residence. Any such residence must have a roof of wood shake shingles. The roof pitch of any structure on a Tract in the Subdivision shall be six feet by twelve feet minimum and twelve feet by twelve feet maximum. The Committee shall have the authority to vary the restrictions contained in this paragraph if and only if, (i) any proposed variations are submitted to it in advance of the commencement of construction of improvements with the proposed variations and (ii) the Committee shall issue its written authorization thereof in advance of the commencement of construction of improvements with the proposed variations.

(d) Except as herein specifically provided, no building, garage, wall or fence shall extend beyond the minimum building lines or setback lines shown upon the plat of the Subdivision, for the front, rear and side yards and no such wall shall be more than 8 feet in height unless otherwise provided hereinafter. Walls along Zero Side Lines, as hereinafter defined, shall extend to rear Tract lines, and the minimum rear building lines or rear setback lines shall not apply to such walls. Fences or walls may also extend to side Tract lines subject to the provisions hereinafter contained. Walls along or within a side setback line may extend to the rear Tract line. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback or building line and the rear Tract line may be an extension of such wall.

(e) Dwellings may be constructed in the Subdivision without regard to one of the side setback lines on the Tract in accordance with the plat of the Subdivision. Such Tract lines are hereinafter called Zero Side Lines. Each Tract having a Zero Side Line is hereinafter called a Zero Side Line Tract. It is intended that the improvements to be placed upon each Tract having a Zero Side Line will be such as to afford privacy to the Tract immediately adjoining the Zero Side Line (hereinafter called the "Adjoining Tract"). The following provisions shall apply to such Zero Side Lines, the Zero Side Line Tracts and the Adjoining Tracts:

(1) The Owner of a Zero Side Line Tract shall, at the time of constructing a residence upon such Tract, construct a masonry wall not less than seven feet tall nor more than eight feet tall along the entire Zero Side Line from the front setback line of the Tract to the rear Tract line. To the extent that such wall constitutes all or any part of a wall of the residence or garage upon the Tract, it may be two stories in height. Any part of such wall between the front and rear building lines may be a wall of the residence and garage upon the Tract, and that part of such wall, if any, between the rear setback line and the rear Tract Line may be an extension of such wall, but no other part of such residence or garage shall extend beyond such rear setback line. If the Owner of a Zero Side Line Tract shall desire to place an eave along the Zero Side Line such Owner shall set back part or all of such wall to the extent necessary to accommodate such eave so that it does not encroach upon the Adjoining Tract by extending over the said Zero Side Line by more than a distance of one foot running parallel with the Zero Side Line. Such wall, regardless of its height, shall be of solid design so as completely to avoid visibility through any part thereof.

(2) Should an Owner of a Zero Side Line Tract wish to have doors or windows of the residence on such Tract facing the Adjoining Tract, which are not part of the wall on the Zero Side Line, each such window or door shall be set back from the Zero Side Line a minimum distance of ten feet and each such window or door, in its entirety, shall be lower than the top of the wall along the Zero Side Line.

(3) The Owner of each Zero Side Line Tract shall provide adequate guttering or other appropriate means to avoid drainage from improvements upon his Tract (other than a free standing wall on the Zero Side Line) to or upon the Adjoining Tract.

(4) Eaves of any structure upon a Zero Side Line Tract may not extend over such Zero Side Line into the Adjoining Tract but, as set forth above, only to the extent of one foot, however, guttering attached to eaves or fascia board may extend a distance of one foot six inches into the Adjoining Tract.

(5) If the Owner of a Zero Side Line Tract shall set back from the Zero Side Line part or all of the wall along such Zero Side Line pursuant to the provisions contained in subparagraph (1) above, the Owner of the Adjoining Tract shall have an easement upon that portion of such Zero Side Line Tract which lies between the wall and the Zero Side Line for the purposes of planting, using and enjoying said area, and the Owner of the Zero Side Line Tract shall not be entitled to the use and enjoyment thereof except for the purpose of building, maintaining, repairing and replacing any of the structures along the Zero Side Line.

(6) The Owner of such Zero Side Line Tract is hereby granted an easement upon the Adjoining Tract upon strip of land six feet wide along the entire Zero Side Line for the purpose of building, maintaining, repairing and replacing any of the Owner's structures along the Zero Side Line. Eaves on the adjoining Tract may overhang not more than two feet into such easement and shall not be less than eight feet from the ground. The Owner of the Adjoining Tract will have the right to use and enjoy the area subject to such easement and shall maintain such area. The Zero Side Line Tract Owner will be liable to the Adjoining Tract Owner for any damage to the Adjoining Tract (and to the land covered by the easement, if any, under subparagraph (5) above) caused by the use of such easement. The Adjoining Tract Owner may construct a brick fence or a fence of material approved in advance by the Committee perpendicular to and extending to the neighboring Zero Side Line

or to the wall as it may be set back under the provisions of subparagraph (1) of this paragraph (e), but any such fence shall have a gate with an easily removable section not less than four feet wide so that the Zero Side Line Tract Owner will have access to the easement granted in this Subparagraph (6).

(7) The provisions herein contained for Zero Side Lines shall in no way be construed so as to allow detached single-family dwellings to be built on adjacent Tracts without observance of the side yard required to be between them by the Zoning Ordinances of the City of Midland.

(f) Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat of the Subdivision.

(g) No noxious or offensive activities shall be carried on upon any Tract, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood in which such Tract is located.

(h) No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage or other outbuilding shall be used on any Tract at any time as a residence, either temporarily or permanently.

(i) No signs of any kind or character shall be allowed on any Tract except one sign of not more than five square feet advertising the property upon which it is located for sale or rent; provided, however, the Declarant and any other person or entity engaged in the construction or sale of residences within the Subdivision shall have the right to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including but not limited to, signs, offices, storage areas and model units.

(j) No oil well drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted on a Tract, nor shall oil wells, tanks, tunnels, minerals excavations or shafts be permitted on any Tract. No derrick or other structure designed for use in drilling for oil, natural gas or other minerals shall be erected, maintained or permitted on any Tract; provided, however, that the temporary use of a rig on a Tract for the purpose of drilling for underground water by a licensed water driller only shall be permitted if written, advance approval is obtained with respect to such utilization of any such rig from the Association or the Committee.

(k) No Tract shall be used or maintained as a dumping ground for rubbish, trash or other waste material. In addition, during such time as there shall be construction on a Tract, the Owner of such Tract shall see to it that such Tract and the area surrounding it are kept reasonably clean and free of debris.

(l) No animal, livestock or poultry of any kind shall be raised, bred or kept on any Tract except that dogs, cats or other household pets may be kept on a Tract; provided, however, that such pets may not be kept for any commercial purpose.

(m) No fence, wall, screen, hedge, tree, shrub or structure shall be erected, planted or maintained in such a position as to in any way obstruct the view so as to constitute a traffic hazard as determined by the Committee or the Association, or both.

(n) Gas meters shall be set near the alley in the rear or side of a residence unless any such meter is of an underground type which must be approved in writing and in advance by the Committee.

(o) No truck (defined herein as any vehicle which either weighs more than 3 tons or has more than four wheels), bus, trailer or recreational vehicle shall be left parked in the street in front of any Tract except during such time as construction and repair equipment are needed to be placed on a Tract while a residence or residences are being built or repaired in the immediate vicinity thereof.

(p) No professional, business or commercial activity to which the general public is invited shall be conducted on any Tract unless such activity shall be designed to accomplish the sale of the Tract.

(q) Construction of new buildings only shall be permitted in the Subdivision, it being the intent of this restrictive covenant to prohibit the moving of any existing building onto a Tract and remodeling or converting same into a residence in the Subdivision.

(r) Anything herein to the contrary notwithstanding, garden and screening walls may be constructed between the front property line and the front building set-back line, provided they are built consistent with applicable provisions of the City Code promulgated by the City of Midland and provided they are not in excess of four feet in height and are of materials approved in writing and in advance by the Committee. No part of a wall (1) between the rear set-back line and the rear Tract line, or (2) between the side set-back line and the side Tract line shall be over eight feet tall.

(s) Each Owner of a Zero Side Line Tract, after laying out a residence on a Tract, but prior to pouring a foundation thereon, shall engage a licensed civil engineer who shall prepare a certificate to be presented to the Committee stating that the construction laid out on the Tract meets all Zero Side Line and set-back line requirements of these Covenants and Restrictions or of the City of Midland, or both.

(t) No more than one residence may be constructed upon one Tract and no front yard of a residence in its entirety may be composed of concrete or cement, it being the intent hereof that all front yards of residences in the Subdivision shall contain grass or ground cover and other foliage in order to heighten the aesthetic attractiveness of the Subdivision. In order to effectuate such intent, all front yards of Tracts in the Subdivision shall have and are hereby required to have underground sprinkler systems in accordance with the minimum specifications with respect to such systems to be provided by the Committee.

(u) No individual water supply system (other than water supplied by a water well drilled in accordance with Section 8.4(j) hereof) or sewage disposal system shall be permitted on any Tract.

(v) At the time of construction of a residence on a Tract, a sidewalk must be built along the full street frontage of the Tract in accordance with specifications to be provided by the Committee which will conform to the applicable provision of the City Code promulgated by the City of Midland.

(w) No garage, servant house or out-building shall be occupied by the Owner, tenant of the Owner or anyone else prior to the construction of a residence on a Tract.

(x) No air-conditioning apparatus shall be installed on the ground in front of any residence on a Tract. No form of air-conditioning apparatus shall be attached to the front wall or side wall of a residence on a Tract other than compressor units for central air-conditioning systems. In the event a compressor is placed in the side yard of any Tract, such compressor must be located behind the front building line,

but in no instance shall such compressor be located further toward the front property line of a Tract than the front wall of the residence. Any evaporative cooler installed on a Tract in the Subdivision shall not be visible from the street.

(y) Each Owner shall maintain all improvements upon his Tract in good condition and appearance, consistent with the high quality provided for herein as construed, defined and applied by the Committee and the Association. The maintenance of any screening walls or fences erected by the Declarant shall be the responsibility of the Owner or Owners of Tracts immediately adjacent thereto.

(z) The Owner of a Tract shall have six months from the date of closing of the purchase by him of such Tract in which to initiate and diligently pursue to completion physical construction of a residence thereon; provided that if an Owner shall on the same date close the purchase by him of five or more Tracts, any such Owner shall be known as a "Multi-Tract Owner" or, collectively, as "Multi-Tract Owners" and this provision shall not be applicable to him or them. This provision shall, however, be fully applicable to Owners who subsequently purchase a Tract from a Multi-Tract Owner effective the closing date of such purchase. In the event of the failure by any Owner, other than a Multi-Tract Owner, to engage in such construction within such time, Declarant or the Association shall have the exclusive, irrevocable right and option to purchase said Tract from said Owner at the purchase price for which said Owner originally purchased the Tract whether from Declarant or Multi-Tract Owner. Declarant or the Association shall exercise such exclusive, irrevocable right and option by providing any such Owner with written notice of its intent to exercise such option in accordance with the notice provisions contained in Section 10.8 hereof. Declarant shall have sixty days from the expiration of such six month period in which to exercise its said exclusive, irrevocable right and option or such right and option shall become void and terminate sixty days after the end of said six month ownership period by any such Owner. Notwithstanding the above, the Board may, in its sole discretion, approve variances of this restriction.

(aa) No residence may be constructed which contains less than 2,500 square feet of livable floor space in the Polo Estates portion of the Subdivision.

(bb) The types of residences which may be constructed on Tracts in Sections 7 and 8 of the Subdivision consist of detached single family residences only which may not exceed two stories in height. Any such single family residence constructed on a Tract in said Sections 7 and 8 of the Subdivision must contain a minimum of 2,200 square feet of livable space, exclusive of any garage, patio or similar structure. If such single family residence shall be two stories, not less than 1,800 square feet of livable space must be contained in the ground floor.

ARTICLE IX

EASEMENTS

Section 9.1 - Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities over, under and across the Subdivision are reserved by Declarant for itself, its successors and assigns, the Association and all utility companies and security companies serving the Subdivision. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Subdivision 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 that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 9.2 - Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times to, from, over and upon the Common Areas for the purpose of the carrying out by the Association of its functions, duties and obligations hereunder.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 - Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as his or her true and lawful attorney-in-fact (coupled with an interest) for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Subdivision provided that this power of attorney shall in no way constitute a proxy;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the plat of the Subdivision, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Midland County Clerk's Office and shall remain irrevocable and in full force and effect thereafter until the tenth anniversary of the recordation of this Declaration.

Section 10.2 - Rezoning and Development. For a period of fifteen years from and after the recordation date of this Declaration, each and every Owner waives, relinquishes and shall not directly or indirectly exercise any and all rights, powers or abilities to contest, object to, challenge, dispute, obstruct, hinder or in any manner disagree with Declarant's or Declarant's successors and assigns proposed or actual development (including without limitation, zoning, rezoning, platting or replatting efforts or processes pertaining to shopping centers, office buildings or retail uses) or any real property within a one mile radius of all or any portion of the Subdivision, as it may be added to or increased in accordance with Article II of this Declaration.

Section 10.3 - Duration. The Covenants and Restrictions of this Declaration shall run with the land and bind the Subdivision, and shall inure to the benefit of and be enforceable by the Association, the Committee and/or the Owner of any Tract subject to this Declaration, their respective legal representatives, heirs, successors, and assigns (to the extent assignment is permitted them by the terms hereof), for a term of fifty years from the date that this Declaration is recorded, after which time the Covenants and Restrictions shall be automatically extended for successive periods of ten years unless an instrument is signed by the Members entitled to cast seventy percent of the votes of the Association and recorded in the Deed Records of Midland County, Texas, which contains and sets forth an agreement to abolish the Covenants and Restrictions; provided, however, no such agreement (where approved by less than ninety-five percent of the votes of the Association) to abolish shall be effective unless made and recorded one year in advance of the effective date of such abolition.

Section 10.4 - Amendments. Notwithstanding Section 10.3 hereof, from and after the tenth anniversary of the recordation of this Declaration, the Covenants and Restrictions may be amended or changed upon the express written consent of at least sixty percent of the outstanding votes of the Association. Any and all amendments to these Covenants and Restrictions shall be recorded in the office of the County Clerk of Midland County, Texas.

Section 10.5 - Enforcement. Enforcement of these Covenants and Restrictions may be had by the Association, Committee or any Owner by any proceeding at law pursuant to Chapter 201 and following of the Texas Property Code or its successor provisions or in equity against any person or persons violating or attempting to violate them, whether the relief sought is injunctive in nature or for recovery of damages, or both, or enforcement of any lien created by these Covenants and Restrictions; but failure by the Association, the Committee or any Owner to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of its right to do so thereafter. The City of Midland, Texas, is specifically authorized (but not obligated) to enforce these Covenants and Restrictions. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party. Notwithstanding any of the above, if at any time, an Owner of a Tract shall fail to control weeds, unsightly growth and/or debris on such Tract, Declarant or the Association shall have the right to enter upon such Tract and take whatever steps are deemed necessary by Declarant or the Association to clean the Tract to Declarant's or the Association's reasonable satisfaction and to bring an Individual Assessment against said Tract in accordance with Section 6.1 hereof, collectible in accordance with Article VI hereof.

Section 10.6 - Initial Bylaws of the Association. The Bylaws of the Association are as of the date of the formation of the Association set forth in their entirety on Exhibit "A" annexed hereto and made a part hereof by this reference for the purpose of providing continuity to the operation of the Association by its future Board of Directors. In the event that the Bylaws of the Association are ever lost or misplaced, the Bylaws contained herein may be relied upon by any future Board of Directors for governing the operation of the Board of Directors.

Section 10.7 - Validity and Severability. Violation of or failure to comply with these Covenants and Restrictions shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may be then existing on or against any Tract. Invalidation of any one or more of these Covenants and Restrictions, or any portion thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of these Covenants and Restrictions conflicts with mandatory provisions of any ordinance or regulation promulgated by the City of Midland, then such municipal ordinance or regulation shall control.

Section 10.8 - Headings, Gender and Number. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise.

Section 10.9 - Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.10 - Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by its respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been

theretofore furnished, in writing, the correct name and address of such mortgage holder(s), and a request from such mortgage holder(s) to receive such notification.

Section 10.11 - Disputes. Matters of dispute or disagreement between Owners or between Owners and the Committee, or between Owners and the Association or between the Committee and the Association with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board, whose determination with respect to any such dispute shall be final, binding and conclusive upon all interested parties.

Reserving to itself all rights and privileges granted to and reserved by the Declarant under said Declaration, the undersigned, POLO PARK ASSOCIATES, hereby ratifies and confirms all of the terms, conditions and provisions of said Declaration as the same are herein changed, amended and completely restated.

WITNESS THE EXECUTION HEREOF this 16th day of April, 1992, but effective for all purposes as of April 16, 1982.

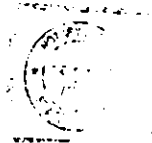
POLO PARK ASSOCIATES

By: Deane H. Stoltz
James A. Lawson
 Deane H. Stoltz
 By James A. Lawson DECLARANT

STATE OF TEXAS
 COUNTY OF MIDLAND

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This instrument was acknowledged before me on this 16th day of April, 1992 by Deane H. Stoltz on behalf of POLO PARK ASSOCIATES, by James A. Lawson, attorney in fact.



Delma J. Corbelle
 Notary Public, State of Texas
 Notary's Printed Name:

Notary's Commission Expires:

I, the undersigned, to denote the agreement of the Association with the terms of the above set forth Restated Declaration am executing the Declaration effective the 16th day of April, 1992 on behalf of the Association.

POLO PARK HOMEOWNER'S
 ASSOCIATION

By: Susan Duffey
 Susan Duffey, President

STATE OF TEXAS
COUNTY OF MIDLAND

§
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This instrument was acknowledged before me this 16th day of April, 1992
by SUSAN DUFFEY, President of POLO PARK HOMEOWNER'S ASSOCIATION.

Delya J. Corbelle

Notary Public, State of Texas

Notary's Printed Name:

Notary's Commission Expires:

BYLAWS OF POLO PARK HOMEOWNERS ASSOCIATION

These Bylaws (referred to as the "Bylaws") govern the affairs of POLO PARK HOMEOWNERS ASSOCIATION, a nonprofit corporation (referred to as the "Corporation") organized under the Texas Non-Profit Corporation Act (referred to as the "Act"). Reference is hereby made to that certain Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Polo Park executed as of the ____ day of _____, 1992 but effective for all purposes as of April 16, 1982 which shall hereinafter be referred to as the "Restrictive Covenants". In the event of any conflict between the terms of these Bylaws and the Restrictive Covenants, the Restrictive Covenants shall control. The defined terms set forth in the Restrictive Covenants shall be applicable hereto.

ARTICLE I**OFFICES****Principal Office**

1.01. The principal office of the Corporation in the State of Texas shall be located at _____. The Corporation may have such other offices, either in Texas or elsewhere, as the Board of Directors may determine. The Board of Directors may change the location of any office of the Corporation.

Registered Office and Registered Agent

1.02. The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of

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**Exhibit
"A"**

Directors may change the registered office and the registered agent as provided in the Act.

ARTICLE 2

MEMBERS

Two Classes of Members

2.01. The Corporation shall have two classes of voting Members as described in Section 3.2 of the Restrictive Covenants.

Entitlement to Membership

2.02. Every Owner of a Tract in the Subdivision shall automatically be, and until such Owner shall cease to own such Tract must remain, a Member of the Association in good standing. There are no membership fees other than the assessments and Monthly Homeowners Dues as described in the Restrictive Covenants.

Voting Rights

2.03. The voting rights of the Members are as described in Section 3.2 of the Restrictive Covenants.

Sanction

2.04. The Board of Directors may impose reasonable sanctions on a Member in accordance with the Restrictive Covenants which sanctions may include but shall not be limited to individual assessments for good cause after a hearing. Good cause includes default of an obligation to the Corporation to pay Monthly Homeowners Dues or any other assessments for the period constituting a default under the Restrictive Covenants. The Board of Directors may not take any action against a Member without giving the Member

adequate notice and an opportunity to be heard. Such notice shall be sent by registered or certified mail, return receipt requested. A Member shall have the right to be represented by counsel at and before the hearing. The Board of Directors may impose sanctions upon a Member by vote of a majority of the Directors who are present and voting at a duly constituted meeting.

ARTICLE 3

MEETINGS OF MEMBERS

Annual Meeting

3.01. Beginning in 1992, the Board of Directors shall hold an annual meeting of the Members at 7:00 o'clock p.m. on the 15th day of February each year or at another time that the Board of Directors designates. If the day fixed for the annual meeting is a Saturday, Sunday, or legal holiday in the State of Texas, the meeting shall be held on the next business day. At the annual meeting, the members shall elect directors, approve a budget for the next succeeding year, and transact any other business that may come before the meeting. If, in any year, the election of directors is not held on the day designated for the annual meeting, or at any adjournment of the annual meeting, the Board of Directors shall call a special meeting of the members as soon thereafter as possible to conduct the election of directors.

Special Meetings

3.02. Special meetings of the Members may be called by the President or the Board of Directors, all in accordance with the Restrictive Covenants.

Place of Meeting

3.03. The Board of Directors may designate any place within Midland, Texas as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If the Board of Directors does not designate the place of meeting, the meeting shall be held at the registered office of the Corporation in Texas.

Notice of Meetings and Quorum

3.04. Notices of annual and special meetings of the Members and quorum requirements with respect to such meetings shall be governed by the Restrictive Covenants.

Proxies

3.05. The use of proxies at Board Meetings shall be governed by the Restrictive Covenants.

Voting by Mail

3.06. The Board of Directors may authorize Members to vote by mail on the election of directors and officers or any other matter that may be voted on by the Members.

ARTICLE 4

BOARD OF DIRECTORS

Management of the Corporation

4.01. The affairs of the Corporation shall be managed by the Board of Directors.

Number of Directors

4.02. The numbers of Directors shall be five (5). All Directors shall be Members. Each director shall serve for a term of two years except that in the first year of

the Corporation, three of the Directors shall serve one year terms.

Nomination of Directors

4.03. At any meeting at which the election of a director occurs, a voting Member in good standing or director may nominate a person with the second of any other voting Member in good standing or director. In addition to nominations made at meetings, a nominating committee shall consider possible nominees and make nominations for each election of directors. The secretary shall include the names nominated by the nomination committee, and any report of the committee, with the notice of the meeting at which the election occurs.

Election of Directors

4.04. A person who meets any qualification requirements to be a director and who has been duly nominated may be elected as a director. Any such election shall be held in accordance with the Restrictive Covenants.

Vacancies

4.05. Any vacancies in the Board of Directors shall be filled in accordance with the Restrictive Covenants.

Annual Meeting

4.06. The annual meeting of the Board of Directors may be held without notice other than these Bylaws. The annual meeting of the Board of Directors shall be held immediately after, and at the same place as, the annual meeting of Members.

Regular Meetings

4.07. The Board of Directors may provide for regular meetings by resolution

stating the time and place of such meetings. The meetings shall be held within Midland, Texas and shall be held at the Corporation's registered office in Texas if the resolution does not specify the location of the meetings. No notice of regular meetings of the Board is required other than a resolution of the Board of Directors stating the time and place of the meetings.

Special Meetings

4.08. Special meetings of the Board of Directors may be called by or at the request of the president or any two Directors. A person or persons authorized to call special meetings of the Board of Directors may fix any place within Midland, Texas as the place for holding a special meeting. The person or persons calling a special meeting shall notify the secretary of the information required to be included in the notice of the meeting. The secretary shall give notice to the directors as required in the Bylaws.

Notice

4.09. Written or printed notice of any special meeting of the Board of Directors shall be delivered to each director not less than five nor more than 15 days before the date of the meeting. The notice shall state the place, day, and time of the meeting, who called the meeting, and the purpose or purposes for which the meeting is called.

Quorum

4.10. Three directors or a majority of the number of directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The directors present at a duly called or held meeting at which a quorum is present may continue to transact business even if enough directors leave the meeting so that

less than a quorum remains. However, no action may be approved without the vote of at least a majority of the number of directors required to constitute a quorum. If a quorum is present at no time during a meeting, a majority of the directors present may adjourn and reconvene the meeting one time without further notice.

Duties of Directors

4.11. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. Directors shall act as fiduciaries with respect to the interests of the Members. In acting in their official capacity as directors of this Corporation, directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation and that are not unlawful. In all other instances, the Board of Directors shall not take any action that they should reasonably believe would be opposed to the Corporation's best interests or would be unlawful. A director shall not be liable if, in the exercise of ordinary care, the director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

Actions of Board of Directors

4.12. The Board of Directors shall attempt to act by consensus. However, the vote of a majority of directors present and voting at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors unless the act of a greater number is required by law or the bylaws. A director who is present at a meeting and abstains from a vote is considered to be present and voting for the purpose of determining the decision of the Board of Directors. For the purpose of determining the decision of the Board of Directors, a director who is represented by proxy in a vote is

considered present.

Proxies

4.13. A director may vote by proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution.

Compensation

4.14. Directors shall not receive salaries for their services. The Board of Directors may adopt a resolution providing for payment to directors of a fixed sum and expenses of attendance, if any, for attendance at each meeting of the Board of Directors. A director may serve the Corporation in any other capacity and receive compensation for those services. Any compensation that the Corporation pays to a director shall be commensurate with the services performed and reasonable in amount.

Removal of Directors

4.15. The Board of Directors or Members may vote to remove a director at any time, only for good cause. Good cause for removal of a director shall include the unexcused failure to attend three consecutive meetings of the Board of Directors. A meeting to consider the removal of a director may be called and noticed following the procedures provided in the bylaws. The notice of the meeting shall state that the issue of possible removal of the director will be on the agenda and the notice shall state the possible cause for removal. The director shall have the right to present evidence at the meeting as to why he or she should not be removed, and the director shall have the right to be represented by an attorney at and before the meeting. At the meeting, the Corporation shall consider possible arrangements for resolving the problems that are in the mutual

interests of the Corporation and the director. A director may be removed by the affirmative vote of fifty percent of the Board of Directors or Members.

ARTICLE 5

OFFICERS

Officer Positions

5.01. The officers of the Corporation shall be a president, two vice presidents, a secretary and a treasurer. The Board of Directors may create additional officer positions, define the authority and duties of each such position, and elect or appoint persons to fill the positions. Any two or more offices may be held by the same person, except the offices of president and secretary.

Election and Term of Office

5.02. The officers of the Corporation shall be elected annually by the Board of Directors at the regular annual meeting of the Board of Directors. If the election of officers is not held at this meeting, the election shall be held as soon thereafter as conveniently possible. Each officer shall hold office until a successor is duly selected and qualified. An officer may be elected to succeed himself or herself in the same office.

Removal

5.03. Any officer elected or appointed by the Board of Directors may be removed by the Board of Directors only with good cause. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer.

Vacancies

5.04. A vacancy in any office may be filled by the Board of Directors for the

unexpired portion of the officer's term.

President

5.05. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of the members and of the Board of Directors. The president may execute any deeds, mortgages, bonds, contracts, or other instruments that the Board of Directors has authorized to be executed. However, the president may not execute instruments on behalf of the Corporation if this power is expressly delegated to another officer or agent of the Corporation by the Board of Directors, the bylaws, or statute. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

Vice President

5.06. When the president is absent, is unable to act, or refuses to act, a vice president shall perform the duties of the president. When a vice president acts in place of the president, the vice president shall have all the powers of and be subject to all the restrictions upon the president. If there is more than one vice president, the vice presidents shall act in place of the president in the order of the votes received when elected. A vice president shall perform other duties as assigned by the president or board of directors.

Treasurer

5.07. The treasurer shall be a Member of the Board of Directors and:

(a) Have charge and custody of and be responsible for all funds and securities of the Corporation.

(b) Receive and give receipts for moneys due and payable to the Corporation for any source.

(c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided in the bylaws or as directed by the Board of Directors or president.

(d) Write checks and disburse funds to discharge obligations of the Corporation. Funds may not be drawn from the Corporation or its accounts for amounts greater than \$ _____ without the signature of the president or a vice president in addition to the signature of the treasurer.

(e) Maintain the financial books and records of the Corporation.

(f) Prepare financial reports at least annually.

(g) Perform other duties as assigned by the president or by the Board of Directors.

(h) If required by the Board of Directors, give a bond for the faithful discharge of his or her duties in a sum and with a surety as determined by the Board of Directors.

(i) Perform all of the duties incident to the office of treasurer.

Secretary

5.08. The Secretary shall:

(a) Give all notices as provided in the bylaws or as required by law.

(b) Take minutes of the meetings of the members and of the Board of Directors and keep the minutes as part of the corporate records.

(c) Maintain custody of the corporate records and of the seal of the Corporation.

(d) Affix the seal of the Corporation to all documents as authorized.

- (e) Keep a register of the mailing address of each Member, director, officer, and employee of the Corporation.
- (f) Perform duties as assigned by the president or by the Board of Directors.
- (g) Perform all duties incident to the office of secretary.

ARTICLE 6

TRANSACTIONS OF THE CORPORATION

Contracts

6.01. The Board of Directors may authorize any officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of and on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of possible contracts and instruments.

Deposits

6.02. All funds of the Corporation shall be deposited to the credit of the Corporation in banks, trust companies, or other depositories that the Board of Directors selects.

Gifts

6.03. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the Corporation. The Board of Directors may not make gifts and give charitable contributions that are not prohibited by the bylaws, the articles of incorporation, state law, and any requirements for maintaining the Corporation's federal and state tax status.

Potential Conflicts of Interest

6.04. The Corporation shall not make any loan to a director or officer of the Corporation. A director, officer, or committee member of the Corporation may lend money to and otherwise transact business with the Corporation except as otherwise provided by the bylaws, articles of incorporation, and all applicable laws. Such a person transacting business with the Corporation has the same rights and obligations relating to those matters as other persons transacting business with the Corporation. The Corporation shall not borrow money from or otherwise transact business with a director, officer, or committee member of the Corporation unless the transaction is described fully in a legally binding instrument and is in the best interests of the Corporation. The Corporation shall not borrow money from or otherwise transact business with a Member, director, officer, or committee member of the Corporation without full disclosure of all relevant facts and without the approval of the Board of Directors or the Members, not including the vote of any person having a personal interest in the transaction.

Prohibited Acts

6.05. As long as the Corporation is in existence, and except with the prior approval of the Board of Directors, no Director, officer, Member or committee member of the Corporation shall:

- (a) Do any act in violation of the bylaws or a binding obligation of the Corporation;
- (b) Do any act with the intention of harming the Corporation or any of its operations;

- (c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation;
- (d) Receive an improper personal benefit from the operation of the Corporation;
- (e) Use the assets of the Corporation, directly or indirectly, for any purpose other than carrying on the business of the Corporation;
- (f) Wrongfully transfer or dispose of Corporation property, including tangible property such as good will;
- (g) Use the name of the Corporation (or any substantially similar name) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business; and
- (h) Disclose any of the Corporation business practices, trade secrets, or any other information not generally known to the business community to any person not authorized to receive it.

ARTICLE 7

BOOKS AND RECORDS

Required Books and Records

7.01. The Corporation shall keep correct and complete books and records of account. The Corporation's books and records shall include:

- (a) A file-endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, and any articles of amendment, restated articles, articles of merger, articles of consolidation, and statement of change of registered office or registered agent.

- (b) A copy of the bylaws, and any amended versions or amendments to the bylaws.
- (c) Minutes of the proceedings of the Members, Board of Directors, and committees having any of the authority of the Board of Directors.
- (d) A list of the names and addresses of the Members, directors, officers, and any committee members of the Corporation.
- (e) A financial statement showing the assets, liabilities, and net worth of the Corporation at the end of the two most recent fiscal years.
- (f) A financial statement showing the income and expenses of the Corporation for the two most recent fiscal years.
- (g) All rulings, letters, and other documents relating to the Corporation's federal, state, and local tax status.
- (h) The Corporation's federal, state, and local information or income tax returns for each of the Corporation's two most recent tax years.

Inspection and Copying

7.02. Any Member, director, officer, or committee member of the Corporation may inspect and receive copies of all books and records of the Corporation required to be kept by the bylaws. Such a person may inspect or receive copies if the person has a proper purpose related to the person's interest in the Corporation and if the person submits a request in writing. Any person entitled to inspect and copy the Corporation's books and records may do so through his or her attorney or other duly authorized representative. A person entitled to inspect the Corporation's books and records may do so at a reasonable time no later than five working days after the Corporation's

receipt of a proper written request. The Board of Directors may establish reasonable fees for copying the Corporation's books and records by members. The Corporation shall provide requested copies of books or records no later than five working days after the Corporation's receipt of a proper written request.

ARTICLE 8

FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of January and end on the last day in December in each year.

ARTICLE 9

INDEMNIFICATION

When Indemnification is Required, Permitted, and Prohibited

9.01. (a) The Corporation shall indemnify a director, officer, committee member, employee, or agent of the Corporation who was, is or may be named defendant or respondent in any proceeding as a result of his or her actions or omissions within the scope of his or her official capacity in the Corporation. For the purposes of this article, an agent includes one who is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, partnership, joint venture, sole proprietor, trust, employee benefit plan, or other enterprise. However, the Corporation shall indemnify a person only if he or she acted in good faith and reasonably believed that the conduct was in the Corporation's best interests. In a case of a criminal proceeding, the person may be indemnified only if he or she had no reasonable cause to believe that the conduct was unlawful. The Corporation shall not indemnify a person who is found liable to the

Corporation or is found liable to another on the basis of improperly receiving a personal benefit. A person is conclusively considered to have been found liable in relation to any claim, issue, or matter if the person has been adjudged liable by a court of competent jurisdiction and all appeals have been exhausted.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent does not necessarily preclude indemnification by the Corporation.

(c) The Corporation shall pay or reimburse expenses incurred by a director, officer, committee member, employee, or agent of the Corporation in connection with the person's appearance as a witness or other participation in a proceeding involving or affecting the Corporation when the person is not a named defendant or respondent in the proceeding.

(d) In addition to the situations otherwise described in this paragraph, the Corporation may indemnify a director, officer, Member, committee member, employee, or agent of the Corporation to the extent permitted by law. However, the Corporation shall not indemnify any person in any situation in which indemnification is prohibited by the terms of paragraph 9.01(a), above.

(e) Before the final disposition of a proceeding, the Corporation may pay indemnification expenses permitted by the bylaws and authorized by the Corporation. However, the Corporation shall not pay indemnification expenses to a person before the final disposition of a proceeding if: the person is a named defendant or respondent in a proceeding brought by the Corporation or one of more members; or the person is alleged to have improperly received a personal benefit or committed other wilful or intentional

misconduct.

(f) If the Corporation may indemnify a person under the bylaws, the person may be indemnified against judgments, penalties, including excise and similar taxes, fines, settlements, and reasonable expenses (including attorney's fees) actually incurred in connection with the proceeding. However, if the proceeding was brought by or on behalf of the Corporation, the indemnification is limited to reasonable expenses actually incurred by the person in connection with the proceeding.

Procedures Relating to Indemnification Payments

9.02. (a) Before the Corporation may pay any indemnification expenses (including attorney's fees), the Corporation shall specifically determine that indemnification is permissible, authorize indemnification, and determine that expenses to be reimbursed are reasonable, except as provided in paragraph 9.02(c), below. The Corporation may make these determinations and decisions by any one of the following procedures:

(i) Majority vote of a quorum consisting of directors who, at the time of the vote, are not named defendants or respondents in the proceeding;

(ii) If such a quorum cannot be obtained, by a majority vote of a committee of the Board of Directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(iii) Determination by special legal counsel selected by the Board of Directors by vote as provided in paragraph 9.02(a)(i) or 9.02(a)(ii), or if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all

directors;

(iv) Majority vote of Members, excluding directors who are named defendants or respondents in the proceeding.

(b) The Corporation shall authorize indemnification and determine that expenses to be reimbursed are reasonable in the same manner that it determines whether indemnification is permissible. If the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination of reasonableness of expenses shall be made in the manner specified by paragraph 9.02(a)(iii), above, governing the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, or a resolution of Members of the Board of Directors that requires the indemnification permitted by paragraph 9.01, above, constitutes sufficient authorization of indemnification even though the provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

(c) The Corporation shall pay indemnification expenses before final disposition of a proceeding only after the Corporation determines that the facts then known would not preclude indemnification and the Corporation receives a written affirmation and undertaking from the person to be indemnified. The determination that the facts then known to those making the determination would not preclude indemnification and authorization of payment shall be made in the same manner as a determination that indemnification is permissible under paragraph 9.02(a), above. The person's written affirmation shall state that he or she had met the standard of conduct necessary for indemnification under the bylaws. The written undertaking shall provide for repayment of the amount paid or reimbursed by the

Corporation if it is ultimately determined that the person has not met the requirements for indemnification. The undertaking shall be an unlimited general obligation of the person, but it need not be secured and it may be accepted without reference to financial ability to make repayment.

(d) Any indemnification or advance of expenses shall be reported in writing to the Members of the Corporation. The report shall be made with or before the notice or waiver of notice of the next membership meeting, or with or before the next submission to Members of a consent to action without a meeting. In any case, the report shall be sent within the 12-month period immediately following the date of the indemnification or advance.

ARTICLE 10

NOTICES

Notice by Mail or Telegram

10.01. Any notice required or permitted by the bylaws to be given to a Member, director, officer, or member of a committee of the Corporation may be given by mail or telegram. If mailed, a notice shall be deemed to be delivered when deposited in the United States mail addressed to the person at his or her address as it appears on the records of the Corporation, with postage prepaid. If given by telegram, a notice shall be deemed to be delivered when accepted by the telegraph company and addressed to the person at his or her address as it appears on the records of the Corporation. A person may change his or her address by giving written notice to the secretary of the Corporation.

Signed Waiver of Notice

10.02. Whenever any notice is required to be given under the provisions of the Act or under the provisions of the articles of incorporation or the bylaws, a waiver in writing signed by a person entitled to receive a notice shall be deemed equivalent to the giving of the notice. A waiver of notice shall be effective whether signed before or after the time stated in the notice being waived.

Waiver of Notice by Attendance

10.03. The attendance of a person at a meeting shall constitute a waiver of notice of the meeting unless the person attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE 11

SPECIAL PROCEDURES CONCERNING MEETINGS

Meeting by Telephone

11.01. The Board of Directors, and any committee of the Corporation may hold a meeting by telephone conference-call procedures in which all persons participating in the meeting can hear each other. The notice of a meeting by telephone conference must state the fact that the meeting will be held by telephone as well as all other matters required to be included in the notice. Participation of a person in a conference-call meeting constitutes presence of that person at the meeting.

Decision Without Meeting

11.02. Any decision required or permitted to be made at a meeting of the Board of Directors may be made without a meeting in accordance with the Restrictive

Covenants.

Voting by Proxy

11.03. A person who is authorized to exercise a proxy may not exercise the proxy unless the proxy is delivered to the officer presiding at the meeting before the business of the meeting begins. The secretary or other person taking the minutes of the meeting shall record in the minutes the name of the person who executed the proxy and the name of the person authorized to exercise the proxy. If a person who has duly executed a proxy personally attends a meeting, the proxy shall not be effective for that meeting. A proxy filed with the secretary or other designated officer shall remain in force and effect until the first of the following occurs:

- (a) An instrument revoking the proxy is delivered to the secretary or other designated officer;
- (b) The proxy authority expires under the terms of the proxy; or
- (c) The proxy authority expires under the terms of the Bylaws.

ARTICLE 12

AMENDMENTS TO BYLAWS

The bylaws may be altered, amended, or repealed, and new bylaws may be adopted by the Board of Directors. The notice of any meeting at which the bylaws are altered, amended, or repealed, or at which new bylaws are adopted shall include the text of the proposed bylaws provisions as well as the text of any existing provisions proposed to be altered, amended, or repealed. Alternatively, the notice may include a fair summary of those provisions.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of Bylaws

13.01. The bylaws shall be construed in accordance with the laws of the State of Texas. All references in the bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

Legal Construction

13.02. If any bylaw provision is held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and the bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the bylaws.

Headings

13.03. The headings used in the bylaws are used for convenience and shall not be considered in construing the terms of the bylaws.

Gender

13.04. Wherever the context required, all words in the bylaws in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

Seal

13.05. The Board of Directors may provide for but need not provide for a corporate seal. Such a seal would consist of two concentric circles containing the words

"POLO PARK HOMEOWNERS ASSOCIATION", "Texas," in one circle and the word "Incorporated" together with the date of incorporation of the Corporation in the other circle.

Power of Attorney

13.06. A person may execute any instrument related to the Corporation by means of a power of attorney if an original executed copy of the power of attorney is provided to the secretary of the Corporation to be kept with the Corporation records.

Parties Bound

13.07. The bylaws shall be binding upon and inure to the benefit of the Members, directors, officers, committee members, employees, and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors, and assigns except as otherwise provided in these bylaws.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of POLO PARK HOMEOWNERS ASSOCIATION and that the foregoing Bylaws constitute the Bylaws of the Corporation. These Bylaws were duly adopted at a meeting of the Board of Directors held on _____, 1992.

DATED: _____, 1992.

Secretary of the Corporation

f:\doorbell\1999\010\bylaws

Filed for Record on the 16 day of April A.D. 1992, at 2:45 o'clock P.M.
Duly Recorded this the 16 day of April A.D. 1992, at 2:50 o'clock P.M.

INSTRUMENT NO. 68516

ROSENELLE CHERRY, COUNTY CLERK
MIDLAND COUNTY, TEXAS

By Becky Bishop, Deputy

Midland County
Cheryl Becker
County Clerk
Midland, Texas 79702



70 2007 00022709

Instrument Number: 2007-22709

As

Recorded On: September 26, 2007

Recording after Aug 2005

Parties:

To

Billable Pages: 3

Number of Pages: 4

Comment: RESTRICTIONS/COVENANTS

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

Recording after Aug 2005	24.00
Total Recording:	24.00

DOC 22709 VOL 2934 PG 547

***** DO NOT REMOVE THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2007-22709

Receipt Number: 240355

Recorded Date/Time: September 26, 2007 11:13:21A

Book-Vol/Pg: BK-OR VL-2934 PG-547

User / Station: L Valles - Cashiering Station 3

Record and Return To:

J BRIAN MARTIN

ATTORNEY AT LAW

LONE STAR ABSTRACT

MIDLAND TX 79702



State of Texas
County of Midland

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly
RECORDED in the volume and page of the named RECORDS of Midland County, Texas as stamped hereon.

Cheryl Becker County Clerk
Midland County, Texas

THE STATE OF TEXAS

*

DDC 22709 VOL 2934 PG 548

*

THE COUNTY OF MIDLAND

*

**FIRST AMENDMENT TO THE SUPPLEMENTAL DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR POLO PARK
ESTABLISHING PENALTIES AND ENFORCEMENT PROCEDURES FOR
FAILURE TO PAY ASSESSMENTS**

This First Amendment to the Supplemental Declaration of Covenants, Conditions and Restrictions for Polo Park Establishing Penalties and Enforcement Procedures for Failure to Pay Assessments made as of the 1st day of September, 2007 (the "First Amendment"), is made by Polo Park Home Owners Association ("Declarant"). Polo Park Home Owners Association is the Declarant of that certain Declaration of Covenants, Conditions and Restrictions for Polo Park dated April 16, 1982, and of record in Volume 720, Page 119 of the Deed Records of Midland County, Texas, as they were restated in their entirety by document dated as of October 28, 1985 and of record in Volume 783, Page 844 of the Deed Records of Midland County, Texas, as well as that certain Supplemental Declaration of Covenants, Conditions and Restrictions for Polo Park Establishing Penalties and Enforcement Procedures for Failure to Pay Assessments dated August 30, 1990, and of record in Volume 815, Page 241, Deed Records of Midland County, Texas (said Supplemental Declaration shall be hereinafter referred to as the "Supplemental Declaration"). Declarant desires to amend the Supplemental Declaration in order to provide additional incentives for Owners in the Subdivision to pay their respective assessments as described in Article VI of the Supplemental Declaration and to provide both Declarant and the Homeowners Association of Polo Park Subdivision with additional means to enforce the timely payment of such assessments. For purposes of this First Amendment, the defined terms used herein unless established or modified hereby shall be the defined terms set forth in the Supplemental Declaration.

THEREFORE, pursuant to and in exercise of the rights reserved to Declarant to amend the Declaration of Covenants, Conditions and Restrictions for Polo Park as set forth in Section 10.4 of the Declaration of Covenants, Conditions and Restrictions for Polo Park, and as they were restated in their entirety, and Declarant having the consent of at least fifty-one percent (51%) of the outstanding votes of the Association, Declarant does hereby amend the Supplemental Declaration in the following particulars, to wit:

WITNESSETH:

WHEREAS, in order to maintain the common areas within the Subdivision in proper manner and in the best interest of all residents thereof, it is necessary that the monthly individual assessments be collected in timely fashion so that the income to the Board of the Homeowners Association or Declarant, as applicable, is not interrupted, and

WHEREAS, it has been Declarant's experience that not all Owners of tracts in the Subdivisions maintain said assessments in a current and paid status, and

WHEREAS, such failure is a detriment to the other Owners in the Subdivision who do pay their individual assessments in timely fashion, and

WHEREAS, it is the intention of the First Amendment to provide reasonable additional incentives for Owners to pay their individual assessments in timely fashion;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT in amendment of the Supplemental Declaration in part, Declarant does hereby delete the provision set forth therein as Section 6.9, and does hereby replace it with the following:

Section 6.9 – Effect of Non-Payment of Assessments. If any assessment described herein and made in accordance herewith shall not be paid within 30 days from the due date established for same, then it shall, with a surcharge of 20% of the current period dues, plus reasonable attorney's fees, become a debt secured by the self-executing lien described in Section 6.1 of the Declaration of Covenants, Conditions and Restrictions for Polo Park, and as they were restated in their entirety, on the Tract or Tracts of the non-paying Owner and may be enforced at law or in equity in judicial or non-judicial foreclosure proceedings at the option and election of the Association in accordance with law. In addition to the above, if an Owner shall fail to pay an assessment within 30 days from the due date of same, (the due date for monthly assessments shall always be on the first of the month to which the assessment applies) the Board or Declarant, as applicable, shall be entitle to (i) withdraw all voting and other privileges from the Owner whose assessment or assessments are past due hereunder until all assessments, surcharges and penalties hereunder on the assessments shall be paid in full by the Owner, and (ii) for each month that a given assessment shall be past due add on an additional surcharge of 20% of the current period dues.

To illustrate the operation of this Section, an example of a past due quarterly assessment in the original amount of \$25.00 per month or \$75.00 per quarter will be used:

Past Due Quarter	1	2
Past Due Quarterly Bill	$\$75 + (\$75 * 20\%) = \$90$	$\$90 + \$75 + (\$75 * 20\%) = \180

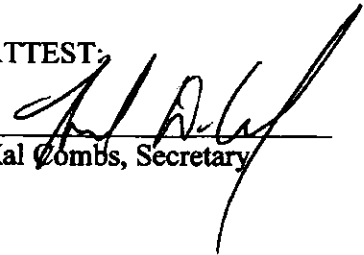
Any remedy reserved by the Association for non-payment of assessments contained herein shall not be exclusive of any other remedy available to it for recovery of any monetary or other damages.

WITNESS THE EXECUTION HEREOF this 24th day of September, 2007.

POLO PARK HOME OWNERS ASSOCIATION

By: Sandra Armbruster
Sandra Armbruster, President

ATTEST:

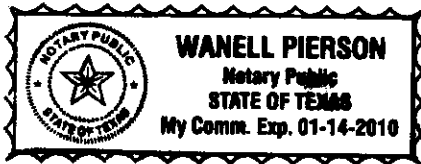

Hal Combs, Secretary


THE STATE OF TEXAS

§
§
§

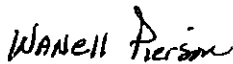
COUNTY OF MIDLAND

The foregoing instrument was acknowledged before me on the 24th day of September, 2007, by Sandra Armbruster, President, on behalf of the POLO PARK HOME OWNERS ASSOCIATION.





NOTARY PUBLIC, STATE OF TEXAS
PRINTED NAME OF NOTARY



WANELL PIERSON

MY COMMISSION EXPIRES:

01-14-2010