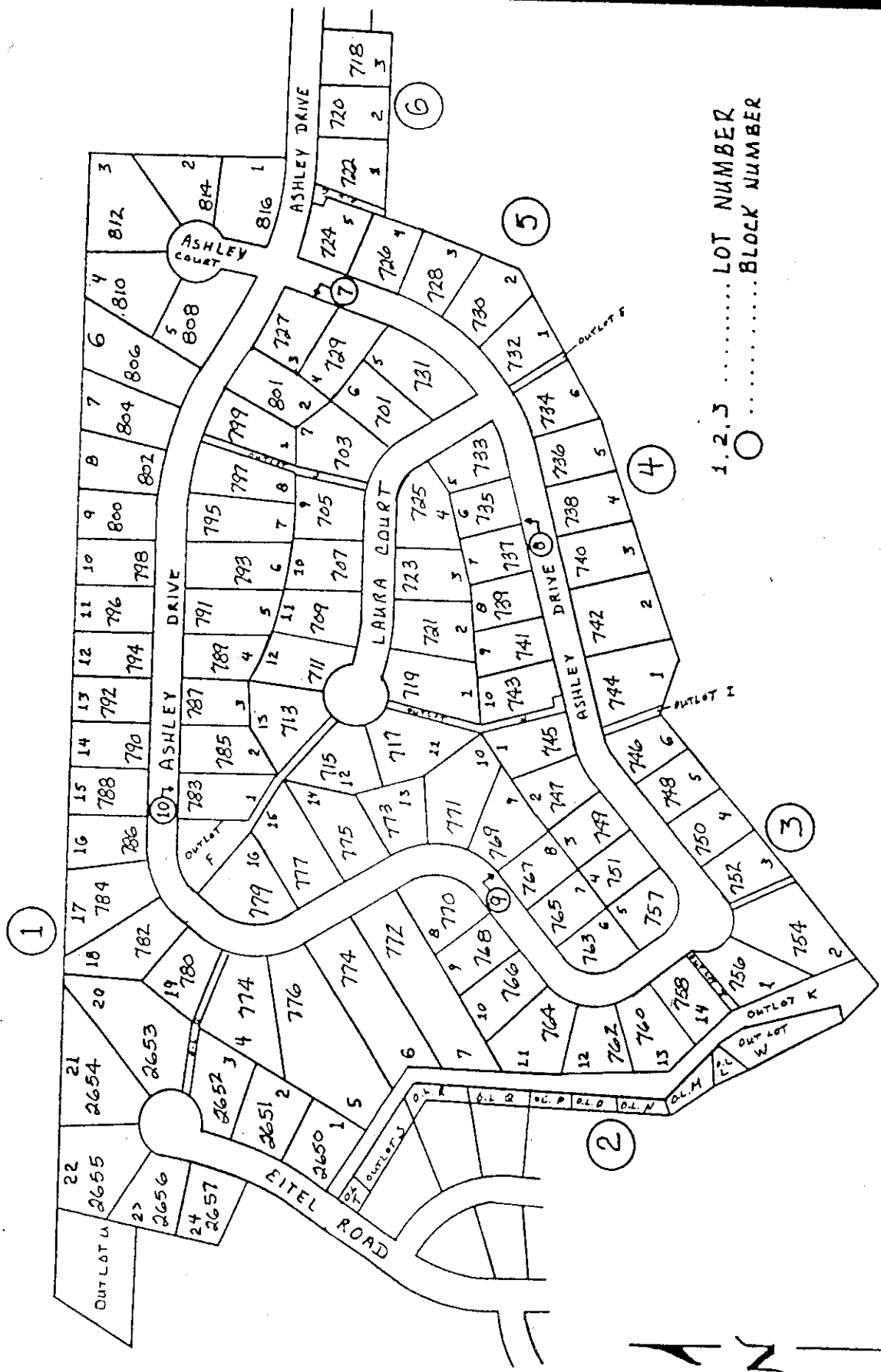


TUSCANY HILLS



1.2.3 LOT NUMBER
 ○ BLOCK NUMBER

**NEIGHBORHOOD TEN
(TUSCANY HILLS THIRD ADDITION)
DECLARATION OF DEVELOPMENT STANDARDS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

WHEREAS, the City of Chaska, Minnesota, a Minnesota municipal corporation, is the fee owner of the land lying and being in the area known as "Jonathan" in the County of Carver and State of Minnesota, described on Exhibit A attached hereto.

WHEREAS, The Jonathan Association is a non-profit homeowner association within Jonathan; and

WHEREAS, the City of Chaska and The Jonathan Association, desire to impose certain development standards, covenants, conditions and restrictions on the Property; and

WHEREAS, the properties described herein are unencumbered by any mortgages;

NOW, THEREFORE, the City of Chaska and The Jonathan Association do hereby declare that the Property shall be held, sold and conveyed subject to the following easements, development standards, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I.

DEFINITIONS

Section 1.01. "Association" shall mean and refer to The Jonathan Association, its successors and assigns.

Section 1.02. "Building Site" as used herein, shall consist of one or more platted lots or one platted lot and portions of adjacent platted lots which are owned by the same party or parties, upon which a single family dwelling is to be located.

Section 1.03. "Developer" shall mean and refer to the City of Chaska.

Section 1.04. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to the Property subject to the Declaration, but shall not mean or refer to the mortgagee of any such lot unless and until such mortgagee has acquired title pursuant to foreclosure of said mortgage and the period within which the fee owner may redeem from such foreclosure has terminated. Where any such lot is being sold to a contract vendee who is entitled to possession of the lot, the contract vendee and not the vendor shall be considered the "Owner" of the lot upon the furnishing of a copy of the executed Contract for Deed to the Association.

Section 1.05. "Property" shall mean and refer to that certain real property and improvements described in the first "Whereas" paragraph of page 1 of this Declaration.

Section 1.06. "Common Properties" shall mean all real property (including the improvements thereto) owned or to be owned by the Association for the common use and enjoyment of the Owners.

Section 1.07. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas and platted areas for convenience of description only.

Section 1.08. "Site" shall mean and refer to any parcel of land conveyed to an Owner for one single family residence whether a single platted lot, or more, or less than a single platted lot and all improvements thereon.

Section 1.09. "Declaration" shall mean and refer to this Declaration and other declarations that at any time or from time to time may effect all or any part of the Property as the same may be amended from time to time as therein and herein provided.

Section 1.10. "Members" shall mean and refer to those persons entitled to membership in the Association as provided in the Declarations.

Section 1.11. "Standards" or "Criteria for Standards" is defined to include the following goals, limitations, guidelines and criteria:

- (a) to protect the Owners against improper use of surrounding property as will depreciate the value of their property;
- (b) to guard against the erection of structures built of improper or unsuitable materials;

- (c) to insure adequate and reasonable development of the Properties;
- (d) to encourage the erection of attractive buildings appropriately located to foster a harmonious appearance and function;
- (e) to ensure compatibility with existing structures;
- (f) to ensure appropriateness of any structure, exterior design, construction materials, size of improvement, or color scheme thereof;
- (g) set backs and off-street parking as specified in this Declaration;
- (h) all terms and use restrictions contained herein; and
- (i) Minimum Building Standards set forth in Section 4.03 of this Declaration.

Section 1.12. "Declarant" shall mean the City of Chaska or its assigns.

Other terms shall have the meanings attributed to them herein.

ARTICLE II.

PERMITTED USES

Section 2.01. Residential Purpose. No Site shall be used except for residential purposes; no buildings shall be commenced, erected, altered, placed or permitted to remain on the Property subject hereto other than one single family dwelling not to exceed two stories in height.

Section 2.02. Division of Site. No Site shall be subdivided or split by any means whatsoever into any greater number of Sites, nor into any Site or Sites of smaller size without the express written consent of the Association.

Section 2.03. Enjoyment of Property. Any Owner may delegate, in accordance with the By-Laws of the Association his right of enjoyment to the Common Properties to the members of his family, or his tenants.

Section 2.04. Offensive Activities. No noxious or offensive activities shall be conducted on the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners or to the Association.

Section 2.05. Compliance. All uses shall comply with the zoning and other applicable regulations as set forth by the City of Chaska or other governmental agencies. Said regulations shall govern if inconsistent herewith to the extent actually inconsistent. If not inconsistent herewith, the standards herein contained shall be considered as requirements in addition to said regulations.

Section 2.06. Signage. No sign shall be placed on the Property, except political campaign signs, or one normal rental or "for sale" sign.

Section 2.07. Animals. Only dogs, cats and other common household pets shall be kept on the Property, provided that they are not kept, bred or maintained for any commercial purpose.

Section 2.08. Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, or other building shall be used on the Property at any time as a residence, either temporarily or permanently.

Section 2.09. Exterior Antenna. No exterior tower, antenna or satellite dish of any kind shall be constructed, maintained, or permitted to remain on the Property unless permitted pursuant to the written policy of the Association in place at the time of the application.

Section 2.10. Objectionable Trees. No objectionable trees or shrubbery, such as cottonwood and box elder trees, shall be planted on the Property.

Section 2.11. Utility Meters. All utility meters, located on the exterior of a building, shall be concealed from view from off the Site or architecturally treated to blend with a building.

Section 2.12. Receptacles. No trash or debris shall be left on any portion of the Property except in approved containers. No trash receptacles, or incinerators, or garbage cans shall be located outside of a building unless completely screened from view.

Section 2.13. Utilities. All buildings shall be served by underground utility distribution facilities. Poles, wires, or other above ground utility service distribution facilities may be temporarily installed during the construction or repair of the underground utility cables and facilities.

Section 2.14. Parking. Unless modified by written policy of the Association the following storage and parking restrictions apply upon the Property:

- (a) The storage or parking of "Winter Season" vehicles is only allowed upon the driveway of the Property and is only allowed from November 1 through March 31.

- (b) The storage or parking of "Summer Season" vehicles is only allowed upon the driveway of the Property and is only allowed from April 1 through November 1.
- (c) The storage or parking of "All Season" vehicles is only allowed upon the driveway of the Property and is allowed all year.

For purposes of this section, the following definitions apply:

- (a) "Winter Season" vehicles are defined as snowmobiles and any trailer upon which they are stored or transported.
- (b) "Summer Season" vehicles are defined as all boats (motorized or non-motorized including sailboats, pontoon boats and houseboats), canoes, rafts, surfboards, windsurfers, jet skis, go carts, campers, trailer homes, and any trailers upon which the above are stored or transported.
- (c) "All Season" vehicles are defined as vans.

In addition, no abandoned vehicles shall be parked on any Site or appurtenant street for a period longer than three (3) consecutive days. For purpose of this restriction, an automobile, van, motorcycle or other motor vehicle which is parked in the same location without use for more than seventy-two (72) consecutive hours shall be presumed to be an abandoned vehicle.

Section 2.15. Home Industry. No profession or home industry shall be conducted in or on any Site without the specific written approval of the Association, which, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Site to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however,

unless it is considered by the Association to be compatible with a high quality residential neighborhood.

ARTICLE III.

REQUIRED YARDS AND SITE MAINTENANCE

Section 3.01. Outside Storage. Outside storage of any items shall not be allowed unless screened from view by enclosures so as to effectively screen such storage from view. The design of such screened enclosure must have prior written approval by the Association.

Section 3.02. Fences, Animal Enclosures and Storage Structures. No fence, animal enclosure, or storage structure shall be erected without prior written approval of the Association. Such approval or the refusal to grant approval shall be based upon the written policy of the Association in existence at the time of the written application for such approval.

Section 3.03. Maintenance.

- (a) Maintenance of the Site. The Site and improvements thereon shall be maintained in a state of good order and repair by the Owner thereof. In the event any Owner of a Site, entitled and required to belong to the Association, shall fail to maintain the Site and improvements, the Board of Directors of the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Site to repair, maintain, and restore the Site and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Site is subject.
- (b) Maintenance of the Common Properties. The Association shall provide for all maintenance and repair of the Common Properties.

ARTICLE IV.

PLAN APPROVAL

Section 4.01. No building or improvement, present or future, shall be commenced, erected, placed or substantially altered on the exterior nor any substantial landscape work done on any Site until the building or other alteration plans, specifications, including elevations and architect's rendering, a plat showing the location of such improvement on the particular Site, including general landscape plans; have been submitted to and approved in writing by the Association, as to fulfilling the purposes and Criteria for Standards herein contained. Provided, however, that the Association shall not be liable to anyone in damages who has submitted plans for approval or to any landowner by reason of mistake in judgment, negligence, or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval of any such plans. Likewise anyone so submitting plans to the Association, for approval, by submitting such plans, and any person when he becomes an Owner agrees that he or it will not bring any action or suit to recover for any such damages against the Association. The Association shall not unreasonably withhold approval of any plans submitted pursuant hereto; provided, however, that failure to meet (i) the Criteria for Standards, (ii) the standards contained herein, (iii) standards as to plans required to be submitted, (iv) standards as to compatibility with existing structures, and (v) standards of appropriateness of any structure,

exterior design, construction materials, size of improvements, or color scheme thereof, shall be grounds for the Association's reasonable disapproval of any such plans. In addition the proposed paint colors for exterior house, garage or other exterior improvements must receive the Association's written approval prior to being painted. All future changes in exterior paint colors must also receive prior Association approval. Normal repainting of previously approved paint colors does not require Association approval.

As part of the initial approval for any new homesite Declarant shall require Developer or each Owner of the new homesite to plant two (2) shade trees with a minimum of a two and one-half inch (2½") caliper in the front yard. The planting of the shade trees shall be at the time the home is constructed or as soon thereafter as weather permits.

All construction work shall, upon approval of plans by the Association, be carried on with dispatch and completed within one (1) year from initiation. Upon completion thereof, the property shall be promptly landscaped.

Section 4.02. All improvements shall be constructed in conformity with this Declaration, the then existing building codes and other applicable codes, ordinances and regulations of the City of Chaska.

Section 4.03. Minimum Building Standards.

- (a) No dwelling unit shall be built on any Site unless it shall have a minimum livable occupancy space of twenty-eight hundred (2800) square feet for the entire dwelling unit including all floor levels. In addition, the dwelling unit shall conform to one of the following definitions:
- (1) One story rambler (ranch) residence without a walkout lower level, which shall have one floor level that is totally above grade that shall have a minimum livable footprint of fifteen hundred (1500) square feet.
 - (2) One story rambler (ranch) residence with a walkout lower level or lower level with at least twenty (20) square feet of windows, shall have a minimum livable footprint on the main floor above grade of twelve hundred (1200) square feet and a minimum livable footprint on the lower floor of twelve hundred (1200) square feet.
 - (3) Split entry residence (raised ranch), which shall have two floor levels, one of which is totally above grade or split level residence, which shall be defined as three or more floor levels, shall have a total square footage for all floors totaling at least twenty-four hundred (2400) square feet.
 - (4) Two story residence, which shall be defined as having three floor levels, two of which are totally above exterior finished grade, one above the other. The combined minimum square footage for the two floors totally above exterior finished grade shall total a minimum livable occupancy space of two thousand (2000) square feet.
- (b) The height of a single family home on any Site shall not exceed a maximum vertical dimension of thirty-eight (38) feet measured from finished grade to the peak of the roof. All dwelling units shall have a minimum 6/12 roof pitch, unless the Association, in its sole discretion, believes a lesser or greater roof pitch is required.
- (c) Garages shall be directly attached or connected to the dwelling by means of a covered walkway or other enclosure of a permanent nature and in keeping with the general architecture.

- (d) Structures erected or placed on any Lot or Site must be in harmony with the residence in respect to workmanship, materials and external design.
- (e) No structure shall be erected or placed nearer to the front lot line, or nearer to a side street line, or nearer to the rear lot line than permitted by the City of Chaska as of the date hereof, and the side yards shall be not less than five (5) feet on garage side and ten (10) feet on the house side. For the purpose of this restriction, eaves, steps and open porches shall not be considered a part of a building; provided, however, that this shall not be construed to permit any portion of the building on any Site to encroach upon other residential Lots or Sites.
- (f) For the purposes of the restrictions contained in Section 4.03(a) hereof, a "livable footprint" is defined as an aerial view of the structure measuring the space within the exterior walls, excluding garages, patios, porches and attics.
- (g) The entire Site area between rear site line and the public street shall be seeded or sodded within sixty (60) days of occupancy, or in the event of inclement weather, as soon thereafter as reasonably possible, as approved by the Association.
- (h) Each Site shall have a garage measuring a minimum of six hundred (600) square feet. Garages shall have a maximum of three garage stalls. Each Site shall have on site parking spaces excluding garages to accommodate at least four cars.

Section 4.04. Prohibition of Manufactured Homes. "Manufactured homes" as defined in Minnesota Statutes 327.31 are prohibited on the Property.

ARTICLE V.

MEMBERSHIP AND VARIOUS RIGHTS IN THE ASSOCIATION

Section 5.01. Each Owner shall be a member of the Association and shall be entitled to one vote for each Site owned. When more than one person holds an interest in any Site, all such persons

shall be members. The vote for such Site shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to each Site. Said Association shall also have as members other landowners, in the Jonathan Development. For the purpose hereof, an owner of a single townhouse unit or condominium unit shall be considered to be a single family residential Site Owner. Provided, however, that on any vote taken on Association business the total multiple dwelling unit votes shall not exceed forty-nine percent (49%) of the total votes voted and if necessary each multiple dwelling unit vote shall be appropriately weighed so that the total thereof does not exceed this maximum. On all votes taken in the Association, multiple dwelling votes shall be taken and counted separately to effectuate the forty-nine percent (49%) policy set forth above.

Section 5.02. If any of the Property is used as rental property, the Owner must include language in any lease or rental agreement requiring the tenants and occupants to be bound by this Declaration.

ARTICLE VI.

COMPLETION OF CONSTRUCTION OF IMPROVEMENTS

If any structure or improvement is begun after approval of the plans therefor as provided in Article IV hereof and is not completed in accordance with the approved plans within one (1) year after the commencement of said construction the Association, at its sole option, may take such steps as may be necessary in its sole

discretion to improve the appearance so as to make the Site harmonious with other Sites and the amount of any expenditure made in so doing shall be the personal, joint and several obligation of the Owner or Owners of the Site involved, as the case may be, and shall be a lien on the property and enforceable as set forth in Article VIII.

ARTICLE VII.

COMMON PROPERTIES

Every Owner shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Site subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Properties.
- (b) The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessments on the Owner's Site remain unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The Association is hereby given the right to establish uniform rules and regulations for the Common Properties.
- (c) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless assented to by two-thirds (2/3) of the members who are voting in person or by proxy at a meeting or meetings duly called for this purpose. Notice of such meeting or meetings shall be given and the required quorum shall be determined in the same manner as provided in Section 8.05. The rights of the Association contained in this paragraph (c) shall be in addition to and shall

in no way limit the rights granted to the Association in this Article VII.

- (d) The Association shall have the right to lease portions of the Common Properties to commercial recreational developers for the purpose of providing recreational facilities or services or both to members provided that the net income from any said lease shall be applied to developing and maintaining the Common Properties in the Jonathan Development.

ARTICLE VIII.

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 8.01. Creation of the Lien and Personal Obligation of Assessments. Each Owner (except the Developer), for each Lot owned within the Properties, hereby covenants, whether or not it shall be expressed in his or her deed, or contract for deed, is deemed to covenant and agrees to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Notwithstanding anything contained herein to the contrary, the

Developer shall not have any liability to the Association or to any other party for any annual assessments or charges and/or special assessments for capital improvements, it being specifically understood that the annual and special assessments shall not be imposed against any Lot until a single-family dwelling has been constructed thereon, a certificate of occupancy issued therefor, and such Lot and dwelling have been sold and conveyed by the Developer to the Owner.

Section 8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Properties.

Section 8.03. Maximum Annual Assessments. The maximum annual assessment for 1994 shall be \$137.80 per Building Site.

- (a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- (b) The maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 8.04. Special Assessments for Capital Improvements. In addition to the annual 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, reconstruction, repair or replacement of a capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 8.05. Notice and Quorum for any Action Authorized under Sections 8.03 and 8.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 8.03 or 8.04 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8.06. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annually or on a annual basis as shall be determined by the Board of Directors of the Association.

Section 8.07. Date of Commencement of Annual Assessments; Due Dates. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8.08. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Such assessment, together with interest thereon at eight percent (8%) per annum, plus all costs and reasonable attorneys' fees, shall be the personal obligation of the person who was the Owner of the property at the time when the assessment was due. No Owner may waive or otherwise escape liability for the assessments provided

for herein by non-use of the Common Properties or abandonment of his Lot.

Section 8.09. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX.

ENFORCEMENT

Section 9.01. The Standards set forth herein shall be enforceable by the Association, or any Owner, their successors and assigns, for the maximum period allowed by law and shall be enforceable by the Association, or any Owner, their successors and assigns, by (i) injunctive relief, prohibitive or mandatory, to prevent the breach of or to enforce the performance or observance of these standards, or by (ii) a money judgment for damages by reason of a breach of those standards, (iii) both (i) and (ii), or (iv) a suit to foreclose any lien authorized herein.

The assessments provided for herein shall be enforceable by the Association by a money judgment against the Owner or Owners responsible therefor or by foreclosure of the lien. A lien for

assessments may be foreclosed against a Site under the laws of this state as if it were a lien under a mortgage containing a power of sale. The Association, or its authorized representative, shall have the power to bid in at the foreclosure sale and to acquire, hold, lease, mortgage and convey any Site so acquired. The Owner, by the acceptance of any conveyance of any interest in the Site grants to the Association full authority, including without limitation a power of sale, to accomplish such foreclosure, acquisition and sale, together with the power and right to exercise any other remedy available under the laws of this state governing such foreclosures. The Association shall, in addition, have the right to pursue any other remedy at law or in equity against an Owner who fails to pay any assessment or charge against his Site. In any action brought by the Association against an Owner in violation of the covenants, including, but not limited to the recovery of delinquent assessments, the Association shall further be entitled to recover all costs of the action, including without limitation interest on the delinquent amount at the rate of eight percent (8%) per annum and reasonable attorneys' fees.

Section 9.02. The failure of the Association and any Owner, their successors or assigns, to enforce any provisions of the Standards contained herein upon the violation thereof shall in no event be deemed to be a waiver of the rights to do so as to any subsequent violation.

Section 9.03. Invalidation of any of the provisions of these covenants and Standards, whether by court order or otherwise, shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 9.04. Any party to a proceeding who succeeds in enforcing a Standard or lien or enjoining the violation of a Standard against an Owner may be awarded a reasonable attorneys' fee against such Owner and shall be entitled to interest at the rate of eight percent (8%) per annum on any monetary amount awarded from the date such amounts shall be determined to have been payable.

Section 9.05. No violation of any of these standards shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any property subject hereto; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these standards as fully as any other Owner of any Site subject hereto.

Section 9.06. The Association hereafter may grant variances from the strict application of the provisions of the standards set forth whereby reason of extraordinary and exceptional conditions of any property or circumstances the strict application of any standard would result in peculiar and practical difficulties or exceptional or undue hardship upon the Owner of any property,

