

shall be the sole qualification for membership. The rights and privileges of membership including the right to vote and to hold office may be exercised by a member, but in no event shall more than one vote be cast nor office held for each Lot or Duplex Unit.

Section 2

Membership Classes. The Association shall have three classes of membership, Class "A," Class "B," and Class "C" as follows:

(1) **Class "A".** Class "A" members are Owners as defined in Article I. An Owner that owns a Duplex Unit shall mean a person who owns one of the two residential areas in a duplex building, and such Owners shall have one vote per Duplex Unit if there are separate Owners for each Duplex Unit. A person that owns both Duplex Units shall have two votes, i.e. one for each Duplex Unit. Class "A" members shall be entitled to one vote for each Lot or Duplex Unit they own. When more than one person holds such interest in any Lot or Duplex Unit, the vote for such Lot or Duplex Unit shall be exercised as those Owners themselves may determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Lot or Duplex Unit's vote shall be suspended in the event more than one person seeks to exercise it. If a Lot or Duplex Unit is owned by a corporation, partnership or trust, such entity shall designate the person authorized to vote on behalf of such entity. Members may vote in person or by proxy, but there shall be only one vote for each Lot and Duplex Unit even if there is more than one person holding title.

(2) **Class "B".** The Class "B" member shall be the Developer only. The Class "B" member shall be entitled to four (4) votes for each Lot or Duplex Unit it owns.

(3) **Class "C."** The Class "C" members are Owners as defined in Article I. A Class "C" member shall be any person or entity that owns a Lot or Duplex Unit that is holding the lot for purposes of building improvements for sale to another. A Class "C" member would include contractors and builders. However, a contractor or builder who owns a lot for purposes of building improvements for his or her own residence is not a Class "C" member but would be a Class "A" member. Class "C" members shall have no voting rights.

ARTICLE V

MEMBERSHIP FEES, ASSESSMENTS, AND BUDGET

Section 1

A. Common Areas. The Developer hereby designates certain Lots of the Subdivision Final Plat as Common Areas for the use, benefit, and enjoyment of all residents of the Subdivision. Said Common Areas are designated as Lot 1000, Lot 1001, and Lot 1002 in the "Final Plat of Springcrest Subdivision." The Common Areas can be used by the residents and their guests for purposes of recreation subject to any reasonable rules adopted by the Board of Directors regarding the use of the Common Areas. At such time as when 90% of all Lots and Duplex Units are no longer owned by Developer, Developer shall convey ownership of the Common Areas to the Association. Developer, in its discretion, can convey these lots to the Association earlier. However, said transfer

shall not be made until such time as the city engineer has inspected and verified the proper construction and improvement of the Common Areas. At such time as when the Common Area is conveyed to the Association, it shall become the responsibility of the Association to properly care for, maintain, and keep in repair the Common Area and all drainage of the Subdivision through the Common Areas.

B. Purpose of Fees and Assessments. The assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environment of the properties and common areas for the common benefit and enjoyment of the Owners and occupants of residences and drainage of the lots and areas of common responsibility and easements including but not limited to repair, replacement and additions thereto, and for the cost of labor, equipment and materials, management and supervision thereof, all as may be authorized from time to time by the Board of Directors.

C. Developer Escrow of Fees and Assessments. Any Entering Membership Fee, Annual Assessments or Special Assessment actually collected by Developer shall be held in a separate non-interest bearing account to be turned over to the Association at the first Annual Meeting of the Members pursuant to Article III, Section 1(B)(7) above.

Section 2

Creation of Lien and Personal Obligations of Fees and Assessments. Each Owner of any Lot or Duplex Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or other conveyance agree to be subject to this Declaration to pay the Association:

- (1) An Entering Membership Fee,
- (2) Annual Assessments;
- (3) Special Assessments and/or individual assessments against any particular Lot or Duplex Unit shall be established and collected pursuant to the terms of this Declaration, including but not limited to reasonable fines as may be imposed herein or by rule.

All such assessments listed above, together with interest thereon at 9% per annum, late charges of \$20 (or as otherwise set by the Board by rule) and cost of collection thereof, including reasonable attorney's fees and court costs:

- (i) Shall be a charge and a continuing lien upon the Lot or Duplex Unit against which any such assessment is made; and
- (ii) Shall be the joint and several personal obligation of each person who had an ownership interest of said Lot or Duplex Unit at the time when any such assessment made fell due.

No Owner shall be entitled to a refund of any portion of the Entering Membership Fee, or any Annual or Special Assessment paid by him, even though said Owner's membership in the Association terminates prior to expiration of the period covered by any such assessment or installment theretofore paid by him. No owner may avoid or escape liability for the Entering Membership Fee, or any Annual or Special Assessment, or Individual Assessments, imposed or levied pursuant to this Article V by abandonment of his Lot or Duplex Unit or by attempted waiver of non-user of the benefits of membership in the Association.

Section 3

Entering Membership Fee. Each Owner who holds an ownership interest in a Lot or Duplex Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association upon becoming a Member of the Association, an Entering Membership Fee of One Hundred Dollars (\$100.00) to be used by the Association for the same purposes for which annual and special assessments may be levied, provided, however, that no person or entity shall be required to pay the Entering Membership fee more than once, without regard to the number of Lots or Duplex Units which said Owner may own from time to time and without regard to the number of times said person may again become a Member of the Association after said Owner's initial membership therein terminates.

Section 4

Annual Assessment and Budget. It shall be the duty of the Board at least twenty (20) days prior to the Association's annual meeting to prepare a proposed budget covering the estimated costs of operating the Association during the coming year which may include a capital contribution or reserve. The Board shall determine the proposed budget and the proposed Annual Assessments to be levied against each Lot and Duplex Unit for the fiscal year. Notice of the proposed budget and proposed Annual Assessment shall be delivered to each Member at the last known residence address of each member at least twenty (20) days prior to the meeting. Failure of a Member to actually receive said notice shall not be defective notice or be grounds for invalidating any action taken at said meeting. The budget and the assessment shall become effective unless disapproved at the annual meeting by a vote of at least fifty-one percent (51%) of the total votes of the Association membership (including those votes of the Class "B" Member or Members) vote against the proposed budget and assessment. Notwithstanding the foregoing, however, in the event the Members disapprove the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year. . In no event shall the Annual Assessment for a lot be set at less than \$36.00 unless a resolution of the Board to lower to Annual Assessment is unanimously adopted. Annual Assessments shall become a lien upon each Lot or Duplex Unit upon the beginning of the fiscal year and shall be due and payable on the date as determined by the Board. The Annual Assessment for a Duplex Unit shall be 50% of the Annual Assessment for a Lot.

Section 5

Special Assessments. In addition to the Annual Assessments authorized above, the Association, through its Board, may levy in any fiscal year, a special assessment for the purpose of defraying in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement, including the necessary fixtures and personal property related thereto. For any Special Assessment in excess of the limit set forth above, written notice of which shall be sent to all Members not less than twenty (20) days in advance of the meeting setting forth the purpose of the meeting. If the Special Assessment is not more than \$100 per lot and \$50 per Duplex Unit total, whether paid in one fiscal year or over multiple fiscal years, the Special Assessment shall be deemed passed at the meeting unless 51% of the total votes of the Association membership entitled to vote are voted against the Special Assessment. If the Special Assessment is more than \$100 per Lot or \$50 per Duplex Unit, then said Special Assessment shall be passed only if more than 50% of the total votes of the Association membership entitled to vote are voted in favor of the Special Assessment; or it shall be passed if more than 50% of all Members entitled to vote sign a written petition to adopt the Special Assessment. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted.

Section 6

Individual Assessments. In the event that the need for maintenance, repairs for proper drainage or erosion control, mowing or clean up of any Lot or Duplex Unit or damage to any common area is caused through the willful or negligent act of any Member, including a Class "C" Member, his family, lessee, guests or invitees or in the event that a Member shall fail or refuse to maintain a Lot or Duplex Unit, or repair or replace the improvements located thereon in a manner satisfactory to the Board, or to the Architectural Control Committee, then, the Association, through the Board, shall give such written notice of the Association's intent to provide the required maintenance, repair or replacement, at such Member's sole cost and expense. The Member shall have fifteen (15) days within which to complete said maintenance, repair or replacement, or if such work cannot be accomplished within said fifteen (15) day period, to commence said maintenance, repair or replacement. If such Owner fails or refuses to discharge said obligations as outlined above, the Association shall have the right, through its duly authorized agents, contractors or employees to enter at reasonable hours of any day, upon said Lot or Duplex Unit to perform such work. Entry upon said Lot or Duplex Unit shall not be deemed a trespass and the Association, Board or any agents, contractors or employees shall not be responsible for any damage to property or for trespass. The Association may levy an individual assessment upon any Lot or Duplex Unit, except as provided in Section 7 of this Article, to cover the cost and expense incurred by the Association in fulfilling the provisions of this section and may bring an action to collect said costs and expenses and any costs of collection, court costs, and reasonable attorney's fees.

Section 7

Exemption from Assessment. The following property subject to this Declaration shall be exempt from assessment as follows:

(1) Any vacant land or Lot or Duplex Unit owned by a Class "B" member unless a Lot or Duplex Unit is occupied as a residence by any member or shareholder or partner of the Class B Member. Any land or Lot or Duplex Units owned by a Class "B" member shall be exempt from all assessments and fees of any kind. Class "B" Member Lot or Duplex Units shall be maintained by such Class "B" member at such member's sole cost and expense.

(2) Class "C" Members shall be exempt from Entering Membership Fees and the Annual Assessments only.

Section 8

Assessment Due Dates. The foregoing assessments shall be due as set forth by the First Board or any Board elected at the Annual Meeting or any other duly called meeting of the Board.

Section 9

Computation. Annual and Special Assessments shall be charged equally against each Lot or Duplex Unit, except that each Duplex Unit shall be charged 50% of the amount charged against the other Lots.

Section 10

Failure to Pay Assessments/Remedies of the Association/Collection. Any assessments or assessment installments which are not paid when due shall be delinquent. Any assessment or assessment installment that is delinquent shall incur a late charge in an amount of \$20 or other amount as the Board may determine from time to time by rule. If the assessment or assessment installment is not paid, the Association may declare the entire balance of such assessment due and payable in full, and a lien against the Lot or Duplex Unit shall be created in such amount and shall include the late charge, interest on the principal amount due, all costs of collection, court costs, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The Association may, as the Board shall determine, institute suit to collect such amounts or to foreclose its lien. Each Member, by acceptance of a deed or other conveyance of a Lot or Duplex Unit, vests in the Association or its agents the right and power to bring all actions against such Member personally for the collection of such charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Members. The Association, acting on behalf of the Members, shall have the power to bid on the Lot or Duplex Unit at any foreclosure sale or to acquire, hold, lease, mortgage and convey the same. No Member may waive or otherwise escape liability for the assessments provided for herein, including by way of illustration but not limitation, abandonment of the Lot or Duplex Unit.

Section 11

Subordination of Lien. The lien provided for in this Declaration shall be subordinate to the lien of any purchase money mortgage or refinance thereof, now or hereafter placed upon the Lot or Duplex Unit subject to assessment.

Section 12

Estoppel Certificates. The Association shall, upon request of a member, at any reasonable time, furnish an Estoppel Certificate signed by an officer or other authorized agent of the Association, setting forth the amount of unpaid assessments and/or other charges, if any, against said member's Lot or Duplex Unit, up to a given date or time of conveyance. Also, said estoppel certificate will certify as to whether or not there are violations of the Governing Documents on the Lot or Duplex Unit as of the date of preparation of the certificate. Said certificate shall be delivered to the place of closing, and all outstanding assessments and other charges, if any, and a reasonable charge, as from time to time determined by the Board, to cover the cost of providing such certificate shall be paid by the Member at the closing and transmitted directly to the Association.

ARTICLE VI **COMMON AREAS AND EASEMENTS**

Section 1

Creek Maintenance and General Access Easements. The Developer reserves and the Association is hereby granted the following easements:

A. Utility Easements. There is hereby reserved by Developer for itself and the Association a perpetual easement upon, across, over, through and under the Lot and Duplex Units as depicted in the Subdivision Final Plat for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems including, but not limited to water, sewers, gas, telephones, electricity, television, cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Developer or the providing utility or service company to install and maintain facilities and equipment on the property, to excavate for such purposes and to fix and maintain wires, circuits and conduits on, in and under the land providing such company restores disturbed areas to the condition in which they were found.

B. Easements for Drainage. Perpetual easements are hereby reserved on, over and under parts of those Lots and Duplex Units as shown on the Subdivision Final Plat for drainage. Said easements are maintained by the respective Owners of said Lots or Duplex Units and the existing grade and elevation shall not be altered. The Developer reserves for itself and the Association an easement and right on, over and under the ground within that Lot or Duplex Unit to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Developer shall restore the affected property to its original condition as near as