

Association shall take no action which is inconsistent with this Declaration without the consent and approval of Declarant so long as Developer owns lots within the subdivision.

3.03 Quorum, Notice and Voting Requirements. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association shall be consistent with its Articles of Incorporation and Bylaws, as amended from time to time.

ARTICLE IV

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

4.01 Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (hereinafter referred to as the "Board"). The Board shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Properties and the Owners, shall provide, and shall pay for out of the maintenance fund(s) provided for in Article V above, the following:

(a) Care and preservation of the Common Properties and the furnishing and upkeep of any desire personal property for use in the Common Properties;

(b) Any private trash and garbage collection service and security arrangements;

(c) Taxes, insurance and utilities (including, without limitation, electricity, gas, water and sewer charges) which pertain to the Common Properties;

(d) The services of a person or firm 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 a manager designated by the Board;

(e) Legal and accounting services;

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

The Board shall have the following additional rights, powers and duties:

(g) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by it;

(h) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual lots with respect to: (i) taxes on the Common Properties, and (ii) insurance coverage (if any) on Common Properties, as they relate to the assessment, collection and disbursement process envisioned by Article V hereinabove;

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

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

(k) To protect or defend the Common Properties and Joint Common Properties 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;

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

(m) To make reasonable rules and regulations jointly with the ENNIS PINEHURST HOMEOWNERS ASSOCIATION, INC., for the operation of the Joint Common Properties and to amend them from time to time;

(n) To make available to each Owner within ninety (90) days after the end of each year an annual report;

(p) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency;

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

4.02 Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

4.03 Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with

any Owner (including, without limitation, Declarant) for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

4.04 Liability Limitations. Neither any Member, the Board, any Director, nor any Officer of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its Directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof or for failure to repair or maintain the same. 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.

4.05 Reserve Funds. The Board may maintain and establish 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 to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Association.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON PROPERTY

5.01 Members Easements of Enjoyment. Subject to the provisions of Section 5.03 of this Article, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, on such Lot shall have a right and easement of use, recreation and enjoyment in and to the Common Properties and Joint Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot, provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties and Joint Common Properties.

5.02 Title to the Common Property. The Declarant has previously conveyed or will convey title to the Common Properties to the Association for the purposes herein envisioned. Title may be conveyed jointly to both the members and the Ennis Pinehurst Homeowner's Association, Inc., as to those Joint Common Properties serving Phase One as well as Phase Two and any future phases of Ennis Pinehurst Subdivision.

5.03 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 Association to prescribe reasonable regulations governing the use, operation and maintenance of the Common Properties and Joint Common Properties;

(b) Liens on mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by Declarant to develop and improve the Property or by the Association to improve or maintain the Common Properties and Joint Common Properties;

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

(d) The right of Declarant or the Association to take such steps as are reasonably necessary to protect the Common Properties and Joint Common Properties against foreclosure;

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

(f) The right of the Association, subject to approval by written consent by the Members having a two-thirds (2/3) majority of the outstanding votes of each voting class of the Association, to dedicate or transfer all or any part of the Common Properties or Joint Common Properties to any municipal corporation, public agency, authority, or utility company for such purposes and upon such conditions as may be agreed upon by such Members.

(g) The right of the Association, subject to approval by written consent by the Members having a two-thirds (2/3) majority of the outstanding votes of each voting class of the Association, to convey, sell or lease all or part of the Common Properties or Joint Common Properties upon such terms and conditions as may be agreed upon by such Members.

5.04 Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and Joint Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

6.01 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser or Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association (or to an entity or agency which may be designated by the Association to receive such monies): (1) annual assessments or charges for maintenance, taxes and insurance on the Common Properties; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (3) individual special assessments levied against individual Lot Owners to reimburse the Association for extra cost for maintenance and repairs caused by the willful or negligent acts of the individual owner and not caused by ordinary wear and tear, such assessment to be fixed, established and collected from time to time as hereinafter provided. The annual, special and individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing personal obligation of the Owner of such Lot at the time when the assessment became due.

6.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of (i) promoting the health, recreation, safety and welfare of the residents of the Property; (ii) improving and maintaining the private walkways, jogging and bicycle trails, creek and drainage nature areas, private streets serving and within the subdivisions, private gate, recreational areas, or other properties, services and facilities directly related to the use and enjoyment of the Common Properties; (iii) the payment of taxes on the Common Properties and insurance (if Any) in connection with the Common Properties and the repair, replacement and additions thereto; (iv) paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and the management and supervision of, the Common Properties and Joint Common Properties; (v) carrying out the duties of the Board of Directors as set forth in Article VI hereof; and (vi) carrying out the various matters set forth or envisioned herein or in any amendment or supplement hereto.

6.03 Basis and Amount of Annual Maintenance Assessments.
(a) The Declarant until a majority of the lots in each respective phase are sold, then thereafter as to such phase in

which a majority of the lots have been sold, the Board of Directors of the Association may establish the maximum annual assessment for each Lot, provided that the maximum annual assessment may not be increased more than twenty-five percent (25.0%) above the maximum annual assessment for the previous year unless otherwise approved by the Members of the Association as provided in Section 3.03 of Article III. Notwithstanding the foregoing, in the event that the Board determines that due to unusual circumstances the maximum assessment even as increased by twenty-five percent (25.0%) will be insufficient to enable the Association to meet its expenses as set forth in Article VI hereof, then in such event, the Board shall have the right to increase the maximum annual assessment by the amount necessary to provide sufficient funds to cover the expenses of the Association without the approval of the Members as provided in Section 3.03 of Article III; provided, however, that the Board shall only be allowed to make one such increase without obtaining approval of the Members.

(b) After consideration of current maintenance costs and the future needs of the Association, the Declarant or the Board of Directors with the Declarant's consent may fix the actual annual assessment at an amount equal to or less than the then-existing maximum annual assessment.

(c) Each Lot owned by a Class A Member shall be charged with one hundred percent (100.0%) of the established per Lot assessment.

6.04 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 6.03 hereof, the Association may levy in any 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, unexpected repair or replacement of a described capital improvement upon the Common Properties and/or Joint Common Properties, including any necessary fixtures and personal property related thereto; provided that any such assessment shall have the affirmative vote of sixty (60%) percent of the Class A Members of ENNIS PINEHURST HOMEOWNERS ASSOCIATION, INC.

6.05 Uniform Rate of Annual and Special Assessments. Both annual and special capital assessments must be fixed at a uniform rate for all Lots owned by Class A Members.

6.06 Date of Commencement of Assessments; Due Dates. The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement, and as may be prescribed by the Board of Directors, shall be payable annually or monthly, in advance, on the first day of each year or month, as the case may be. The due date or dates, if it is to be paid in installments, or any annual assessment or special assessment under Section 6.03 and 6.04 hereof, shall be fixed in the respective resolution authorizing

such assessment.

6.07 Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least sixty (60) days in advance of such date or period if such assessments are being increased and at least thirty (30) days in advance of such date or period if such assessments are not being increased; and the Board of Directors shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. 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 certificate.

6.08 Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall become delinquent and shall, together with late charges and service charges [hereinafter defined in subparagraph (c)], and interest thereon at the highest permitted lawful rate per annum and costs of collection thereof, thereupon become a continuing debt secured by a lien on the Lot of the non-paying Owner which shall bind such Lot in the hands of the Owner, his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Furthermore, the lien for unpaid assessments shall be unaffected by and sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Properties or by abandonment of his Lot.

(b) The Association may also give written notification to the holder(s) of any mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within thirty (30) days, provided that the Association has theretofore been furnished in writing with the correct name and address of the holder(s) of such mortgage.

(c) If any assessment remains unpaid at the expiration of fifteen (15) calendar days from and after the due date established by the Board, a late charge shall be assessed against the non-paying Owner for each month that any portion of an assessment remains unpaid. The late charge shall be in the amount of Twenty-five and No/100 Dollars (\$25.00) for all Class A Members. A service charge in the amount of Ten and No/100 Dollars (\$10.00) shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and service charges may be adjusted, from time to time, by the Board consistent with any charges in the amounts of regular or special assessments.

(d) If any assessment or part thereof, late charge or service charge, is not paid when due, the unpaid amount of such assessment together with all late charges and service charges shall bear interest from and after the date when due at the highest permitted lawful rate per annum, and the Association may, at its election, retain the services of an attorney for collection and there shall also be added to the amount of such unpaid assessment, late charge or service charge, any and all collection costs incurred hereunder by the Association, including reasonable attorneys' fees.

(e) Notice of the lien referred to in Section 6.01 may be given by the recordation in the Real Property Records of Ellis County, Texas of an Affidavit of Delinquent And Notice Of Assessment Lien, duly executed by an officer, managing agent or officer of the Association, setting forth the amount owed, the name of the last known lot owner or owners of Record, and the legal description of the lot.

Each lot owner, hereby expressly recognizes the existence of said lien as being prior to the ownership of such lot and hereby vests in the Board the rights and power to bring all actions against such lot owner or owners personally for the collection of such unpaid assessments, interest, reasonable attorney's fees and all costs and expenses, and to enforce the aforesaid lien by all methods available for the enforcement of liens, both judicially and by non-judicial foreclosure pursuant to and in accordance with Tex. Prop. Code Ann. § 51.002 (as same may be amended or revised from time to time hereafter) and in addition to and in connection therewith, by acceptance of a deed to his/her lot and/or as evidence by his/her signature below, each lot owner expressly grants, bargains, sells, and conveys to the President of the Association from time to time serving, as Trustee (and to any substitute or successor Trustee as hereinafter provided for) such owner's lot, and all rights appurtenant thereto, in trust, for the purpose of securing the aforesaid lien for assessments and other sums due hereunder remaining unpaid by such lot owner. The Trustee herein designated may be charged from time to time by execution of an instrument in writing signed by the President or Vice-President of the Association and attested to by the Secretary of the Association and filed in the office of the County Clerk of Ellis County, Texas. In the event of the election of the Board to

foreclose the lien, then it shall be the duty of the Trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed) to enforce this trust and sell such lot, and all rights appurtenant thereto, at the south east steps of the Ellis County Courthouse, the county in which the lot is located, on the first Tuesday of any month between the hours of 10 o'clock a.m. and 4 o'clock p.m., the notice of sale to include the time of sale as provided by law, to the highest bidder for cash at public venue after the Trustee shall have given notice of the proposed sale in the manner hereinafter set forth and to make due conveyance to purchaser or purchasers, with General Warranty of Title to such purchaser or purchasers binding upon the lot owner, its heirs, executor, administrators and successors. The Trustee shall give Notice of such proposed sale by posting a written Notice of time, place and terms of sale for at least twenty-one (21) consecutive days preceding the date of sale at the Courthouse Door of Ellis County, Texas and, in addition, the Board shall serve written Notice at least twenty-one (21) consecutive days preceding the date of sale or the proposed sale by certified mail on each such owner or owners according to the records of the Board, and file the appropriate Notice with the County Clerk's Office of Ellis County, Texas. Service of such Notice shall be completed upon deposit of the Notice, postage prepaid, properly addressed to such owner or owners at the most recent address as shown by the records of the Association, in a Post Office or official depository under the care and custody of the United States Postal Service. The Affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of such service.

At any foreclosure, judicial or non-judicial, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with costs and attorney's fees, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed. From and after any such foreclosure the occupants of such lot shall be required to pay a reasonable rent for the use of such apartment and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure sale shall be entitled to appoint a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such apartment by forcible detainer or by Writ of Possession.

It is the intent of the provisions of this Section 6.08 (e) to comply with Tex. Prop. Code Ann. § 51.002 relating to non-judicial sales by power of sale, and in the event of the amendment of § 51.002 hereafter applicable hereto, the President of the Association acting without joinder of any lot owner may amend this Declaration to comply with such amendments to Tex. Prop. Code § 51.002.

6.09 **Rights of City of Ennis.** Unless otherwise approved by seventy-five percent (75%) of the outstanding votes within each voting class, the Association shall not by act or omission seek to abandon its obligations as established by this Declaration.

However, in the event that:

(a) The Association dissolves and the Common Properties shall not be either (i) dedicated to and accepted by an appropriate municipal corporation, public agency, authority or utility to be devoted to purposes as nearly as practicable the same as those to which such Common Properties were required to be devoted by the Association, or (ii) conveyed to another organization or entity which assumes all obligations imposed hereunder upon the Association to maintain said Common Properties; or

(b) The Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder; then, in either such event, the City of Ennis, Texas, shall have the right, but not the obligation, to assume the duty of performing all such maintenance obligations of the Association at any time after such dissolution, upon giving written notice to the Owners, or at any time after the expiration of twenty-one (21) days after receipt by the Association, its successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied. Upon assuming such maintenance obligations, the City of Ennis may collect, when the same become due, all assessments, annual or special, levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining or caring for the Common Properties; and, if necessary, enforce the payment of delinquent assessments in the manner set forth herein. In the alternative, upon assuming such maintenance obligations, the City of Ennis may levy an assessment upon each Lot on a pro-rate basis for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During any period that the City of Ennis assumes the obligation to maintain and care for the Common Properties, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the City of Ennis to maintain the Common Properties shall cease and terminate when the Association, its successors or assigns, shall present to the City of Ennis reasonable evidence of its willingness and ability to resume maintenance of the Common Properties. In the event the City of Ennis assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City of Ennis, its agents, representatives and employees, shall have right of access, ingress and egress to and over the Common Properties for the purposes of maintaining, improving and preserving the same, and in no event, and under no circumstances, shall the City of Ennis be liable to the Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or construction (excluding, however, malfeasance and gross negligence) relating to any manner to maintaining, improving and preserving the Common Properties.

6.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any first mortgage or deed of trust now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale, whether public or private, of such property pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve such Lots from liability for the amount of any assessments thereafter becoming due not from the lien of any such subsequent assessment.

6.11 Exempt Property. The following property otherwise subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

(a) All properties dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Properties and Joint Common Properties as defined in Article I hereof.

(c) Any and all areas which may be reserved by the Declaration on the recorded plat(s) of the Property.

ARTICLE VII

INSURANCE; REPAIR AND RESTORATION

7.01 Right to Purchase Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenant thereto, for the interest of the Association and of all Members thereof, 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) Public liability and property damage insurance on a broad form basis.

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

(d) Officers and directors liability insurance.

7.02 Insurance Proceeds. The Association and the Members 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 VII, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

7.03 Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency.

ARTICLE VIII

ARCHITECTURAL CONTROL

Architectural control shall be supervised by an Architectural Control Committee, hereinafter called the "Committee", consisting of either the Construction Group, as hereinafter described, or the Board, in the following manner:

(a) The Construction Group shall consider and may act as the committee only with respect to requests for approvals or variances made by or on behalf of Members. Any requests for approvals or variances made by or on behalf of Class A Members may be considered and acted upon by the Board, under which circumstances, the Board will be acting as the Committee.

(i) The Construction Group shall be composed of three (3) or more individuals selected and appointed by Declarant. The Construction Group shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Property.

A majority of the Construction Group's members may act on behalf of the entire Construction Group. In the event of the death or resignation of any member of the Construction Group, the remaining members shall have full authority to designate and appoint a successor. No member of the Construction Group shall be entitled to any compensation for service performed hereunder and neither the Construction Group nor any of its members shall be liable to any Owner, for any claims, causes of action or damages of what ever kind (except where occasioned by gross negligence) arising out of service performed, actions taken, or inaction in connection with any undertaking, responsibility, or activity hereunder or request for same.

(ii) The Board shall function as the representative of

the Owners of the Lots for the purposes herein set forth, as well as for all other purposes consistent with the creation and preservation of a first-class residential development. The Board shall use its best efforts to promote and ensure a high level of quality, harmony and conformity throughout the Property.

A majority of the members of the Board may act on behalf of the entire Board or the Board may appoint an advisory committee to act on behalf of the Board. No member of the Board or of any advisory committee shall be entitled to any compensation for service performed hereunder and neither the Board, any of its members, nor the members of any advisory committee shall be liable to any Owner, for any claims, causes of action or damages of what ever kind (except where occasioned by gross negligence) arising out of service performed, actions taken, or inaction in connections with any undertaking, responsibility, or activity hereunder or request for same.

(b) No building, structure, fence, wall or improvement of any kind or nature shall be erected, placed or altered on any Lot until all plans and specifications and/or a plot plan have been submitted to and approved in writing by the Committee 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;

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

(iv) the other standards set forth within this Declaration (and any amendments hereto) or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

(c) Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. 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 Owner of his designated representative marked "Approved", and accompanied by a statement of complete approval or approval based on certain conditions and specifications. 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. If the Committee, or its respective designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, then approval shall be presumed; provided, however, that no such approval shall be presumed if the request is submitted by or on behalf of a Member to the Board as the Committee or if the request is submitted by or on behalf of a Class A Member to the Construction Group as the Committee. Further provided, however, that nothing in this paragraph shall affect in any way the method for seeking or granting variances, as described in the following paragraph, nor shall any failure of the Committee to act on a variance request within any particular period of time constitute the granting or approval of any such variance request.

(d) Upon submission of a written narrative request for same, the Committee may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the Covenants or Restrictions which are provided in this Declaration or which may be promulgated in the future. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. no member of the Committee shall be liable to any Owner or other person claiming by, through, or on behalf of any Owner, for any claims, causes of action, or damages arising out of the granting or denial of, or other action or failure to act upon, any variance request by any Owner or any person acting for or on behalf of any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Committee's right to strictly enforce these Covenants and Restrictions against any other Owner. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and described in complete detail the exact nature of the variance sought. Any grant of a variance by the Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. Any variance granted by the Committee shall be considered a rule made under this Declaration.

ARTICLE IX

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS - PROTECTIVE COVENANTS

The Property (and each Lot situated therein) shall be occupied and used as follows:

9.01 Residential Use. All Lots (excluding, however, those platted Lots on which certain Common Properties will be located) shall be used for residential purposes only. No building or structure shall be erected, altered, placed or permitted to

remain on any Lot other than a single-family dwelling and a private garage for two (2) or more automobiles. No building or structure on any Lot shall exceed two (2) stories in height.

9.02 Minimum Floor Space. The main structure on each Lot shall contain a minimum square footage, exclusive of porches, garages and other out-buildings, as follows:

- (a) All Lots: 1850 square feet.
- (b) All future phases: to be determined by Declarant when and if annexed.

9.03 Garages and Porte Cocheres. Each single-family residential dwelling erected on any Lot shall provide garage space or porte cochere for a minimum of two (2) conventional automobiles. Porte-cocheres must be approved in writing by the Architectural Control Committee.

9.04 Roofs. All roofs shall be (i) constructed of slate or other three-dimensional material or composition with a color and physical appearance resembling the original shingles, which are twenty-five (25) year composition shingles maximum of 250 pounds per square, (ii) approved by the Architectural Control Committee, and (iii) otherwise be in compliance in all respects with applicable City of Ennis ordinances. The roof pitch of any structure shall be four (4) feet by twelve (12) feet minimum and twelve (12) feet by twelve (12) feet maximum. Single story dwellings shall have a minimum eight (8) by twelve (12) and two story dwellings shall have a minimum of six (6) by eight (8) with porches and patios being a minimum of four (4) by twelve (12).

9.05 Building Lines. All residences or dwellings erected or placed on any Lot shall face the road or street adjacent to the Lot as shown on the recorded plat of the Property or as prescribed in the deed from Declarant conveying the Lot. No portion of such dwelling or residence shall be nearer to the front property line of said Lot than as designated on the recorded plat of the Property. No structure or improvement of any kind shall be nearer to the rear property line of any Lot than as designated on the recorded plat of the Property. No structure or improvement of any kind shall be nearer to the side property line of any Lot than as designated on the recorded plat of the Property. No structure or improvement of any kind shall be constructed or placed upon any Lot outside any perimeter fencing upon such Lot.

9.06 Fences. No chain link fences or other wire type fences shall be erected or located on any Lot so as to be visible from the front, side or rear of the Lot. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback line indicated on the recorded plat of the Property. No fence, wall or hedge shall exceed six (6) feet in height unless otherwise specifically required by the City of Ennis. Wood fencing approved by the Architectural Control Committee will be allowed to extend from the outer perimeter of a

home to the side property line a distance not to exceed approximately ten (10%) percent of the Lot width on any side of the home. The Architectural Control Committee may allow some flexibility on this dimension in the case of pie-shaped or irregularly shaped Lots. This wood fencing will be allowed only if such fence is to be located between the front and rear boundaries of the dwelling and approval will be subject to thorough consideration of the effect such proposed fencing might have on adjoining Lots, dwellings and/or golf course Lots. On golf course Lots fencing is permitted twenty (20) feet from the back property line. In addition, such wood fencing must be recessed from the front building line of the Lot a minimum distance even with front corner of the dwelling located on the Lot. Any fencing located from the front of the Lot to the back of the Lot (perpendicular to front property line) may be of wood material; provided, however, that all such wood fencing, regardless of location, shall (i) faced so that no stringers or posts shall be visible from any residential street, (ii) be composed of cedar or redwood, (iii) have slats measuring between four (4) and eight (8) inches wide which are installed vertically only (not horizontally or diagonally), (iv) have an even flat top and (v) not be painted or stained on any surface which faces a street, alley or adjoining Lot unless otherwise approved by the Architectural Control Committee. All service and sanitation facilities must be enclosed within fences, walls or landscaping so as not to be visible from any residential street.

Given the great variety of potential fencing and screening configurations and materials, it is understood that the fencing restrictions contained in this Section 9.06 may not be exhaustive; therefore, no fence, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Control Committee.

9.07 Signs. No sign or signs shall be displayed to the public view on any Lot, except that: (1) any builder, during the applicable initial construction and sales period, may utilize one professional sign (of not more than nine (9) square feet in size) per Lot for advertising and sales purposes, provided that such sign must be approved by the Architectural Control Committee; (2) thereafter, a dignified "for sale" or "for rent" sign (of not more than nine (9) square feet in size) may be utilized by the Owner of the respective Lot for the applicable sale or rent situation; (3) development-related signs owned or erected by Declarant shall be permitted; and (4) signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted, (ii) limited to two (2) in number (one in the front yard and one in the back yard); (iii) of a reasonable size; and (iv) subject to the prior written approval of the Architectural Control Committee.

9.08 Easements; Utilities. All streets, alleys and easements shown on the recorded plat of the Property have been reserved for the purposes indicated. No Owner may erect any structure of any type whatsoever in these easement areas, nor may

an Owner use the surface of an easement area for any private use. With respect to these easement areas, as well as any other areas described within recorded easement documents, and the Common Properties, any and all bona fide public utility service companies (including, but not limited to, telephone, cable television, gas and electric) shall have the right of access, ingress, egress, regress and use of the surface estate for the installation and maintenance of utility facilities.

Except as to special street lighting or other aerial facilities which may be required by the City of Ennis or may be required by the franchise of any utility company, no aerial utility facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed within the Property, whether upon Lots, easements, streets, or rights-of-way of any type, either by the utility company or any other person or entity, (including but not limited to any person owning or acquiring any part of the Property) and all utility service facilities (including but limited to water, sewer, gas, electricity and telephone) shall be buried underground, under recreational easements, Common Properties, streets, or utility easement areas for the purpose of serving any structure located on any part of the Property.

9.09 Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot. Temporary structures shall include, but not be limited to, any garage, servant's house or other improvement erected more than one hundred twenty (120) days prior to the completion of the main portion of the single-family dwelling. However, any Member may maintain temporary sales or construction offices, provided such sales or construction offices are removed within sixty (60) days after completion of sales construction, as the case may be.

9.10 Vehicles. Any truck, bus, boat, boat trailer, trailer, mobile home, motor home, campmobile, camper, motorcycle or any motorized vehicle other than a conventional automobile shall be stored, placed or parked within the garage of the appropriate Owner so as to be completely hidden from view.

Trucks with tonnage in excess of three-quarters (3/4) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or stored within the Property at any time.

9.11 Garbage; Weeds. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in city approved containers. All garbage containers shall on the day of collection be placed in compliance with applicable requirements of the City of Ennis. If, at any time

after construction of a residence has commenced, an Owner shall fail to control weeds, grass and /or other unsightly growth on his Lot or on the Common Area fronting his Lot, the City, Declarant or the Board shall have the authority and right to assess and collect from the Owner of such Lot a sum not to exceed five hundred dollars (\$500.00) for controlling such unsightly growth on each respective occasion of such maintenance. The assessments, together with interest (at the highest permitted lawful rate per annum) thereon and any costs of collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the continuing personal obligation of the Owner of such Lot at the time when the assessment occurred. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

9.12 Construction Completion Time. In the event that a residence is partially or totally damaged by fire or other causes, construction or re-construction of the damaged residence, or portion thereof, must commence within one-hundred twenty (120) days after the occurrence causing the damage. No construction or reconstruction shall commence until plans and specifications have been submitted to the Architectural Control Committee (and are subsequently approved) as required in Article VIII(b) hereof.

9.13 Offensive Activities. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance within the Property or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for commercial purposes and further provided that all Owners shall comply with the applicable ordinances of the City of Ennis.

9.14 Exterior Surfaces. The exterior surface of all residential dwellings shall be constructed containing eighty (80%) percent brick, brick veneer, stone or stone veneer, stucco or stucco veneer, masonry, or any combination thereof, to be approved by the Architectural Control Committee. All exterior surfaces, especially any painted or stained wood surfaces, (including, without limitation, garage doors) must be maintained in good condition. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, lights, mail chutes, exterior paint or stain, shall be subject to the prior written approval of the Architectural Control Committee. The installation of solar panels on any roof or other portion of a residence which is visible from any street, alley or adjoining Lot is expressly prohibited. All windows which are visible from any residential street shall be covered with draperies or blinds within

one hundred twenty (120) days after the date on which the main structure is 95.0% complete. All tin foil and newspaper window coverings are expressly prohibited.

9.15 Antennas and Aerials. All satellite dishes larger than three and one-half feet (3.5') in diameter, television antennas and other antennas and aerials shall be located inside the attic or under the roof in such a manner as not to be visible from any street, alley and adjoining lot. No towers shall be permitted.

9.16 Landscaping. Each residence shall be fully landscaped with sprinkler system within one hundred twenty (120) days after the date on which the main structure is ninety-five (95.0%) complete.

9.17 Retaining Walls. Retaining walls shall be constructed of concrete and shall be faced with brick or stone of the same type as that used on the dwelling.

9.18 Tennis Courts. Tennis courts and basketball courts shall not be permitted upon any Lot. Basketball goals, backboards and nets shall only be permitted if they are not visible from any street.

9.19 Gazebos, Greenhouses, Storage Sheds and Clotheslines. No gazebo, greenhouse, storage shed, clothesline or other similar structure shall be erected, constructed or placed upon any Lot without prior written approval by the Architectural Control Committee.

9.20 Mail Boxes. All mail boxes, unless affixed to the dwelling house, shall be affixed to a structure of the same building composition as the dwelling and permanently placed in the ground, and such mail boxes shall be of a design approved in writing by the Architectural Control Committee and shall comply with all applicable laws and ordinances.

9.21 Pool Equipment. No Pool may be erected, constructed or installed without the prior consent of the Architectural Control Committee. Above ground pools are expressly prohibited. All pool service equipment shall be fenced and located in either (a) a side yard between the front and rear boundaries of the dwelling; and shall not be visible from any residential street or alley.

9.22 Utility Meters and Air-Conditioning Compressors. all utility meters, equipment, air-conditioning compressors, evaporative coolers and similar items must be located in areas designated by the Architectural Control Committee and must be screened from view as required by the Architectural Control Committee.

ARTICLE X**EASEMENTS**

10.01 Utility Easements. Easements for installation, maintenance repair and removal of utilities and drainage facilities over, under and across the Property are reserved as set forth in Section 9.08. Full rights of ingress and egress shall be had by Declarant and any bona fide utility company at all times over the easement areas 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.

10.02 Ingress, Egress and Maintenance by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon the Common Properties for the purpose of maintaining the Common Properties as set forth herein.

10.03 Police Power Easement. With respect to the Common Properties and streets, easements and rights-of-way within the Property, the City of Ennis and all other governmental agencies and authorities shall have full rights of ingress, egress, regress and access for personnel and emergency vehicles for maintenance, police and fire protection, drainage and other lawful police powers designed to promote the health, safety and general welfare of the residents within the Property.

ARTICLE XI**GENERAL PROVISIONS**

11.01 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 Owners subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term ending January 1, 2025, after which time said covenants shall be automatically extended for two (2) successive periods of ten (10) years each unless an instrument signed by the Owners of not less than seventy-five percent (75.0%) of the Lots has been recorded, agreeing to abolish the Covenants and Restrictions in whole or in part; provided, however, that no such agreements to abolish shall be of the effective unless made and recorded thirty (30) days in advance of the effective date of such change; and unless written notice of the proposed agreement to abolish is sent to at least one (1) Owner of every Lot at least ninety (90) days in advance of any action taken.

11.02 Amendments. Except as provided in Section 11.01 of this Article XI, the Covenants and Restrictions of this Declaration

may be amended an/or changed in whole or in part, only with the consent of Declarant so long as Declarant owns any lots in any phase of the subdivision and either the Owner of seventy-five percent (75.0%) of the other Lots, evidenced by a document in writing bearing each of their signatures, or by a resolution passed by the majority of the Board of Directors evidencing the consent of the Owners of seventy-five percent (75.0%) of the other Lots and authorizing the President of the Association to execute such document and duly recorded in the land records of Ellis County, Texas.

11.03 Enforcement. Enforcement of these Covenants and Restrictions shall be by a proceeding initiated by any Owner, any member of the Construction Group or the Board or by the City of Ennis, against any person or persons violating or attempting to violate any Covenant or Restriction contained herein, either to restrain or enjoin violation or to recover damages for the violation, or both, or to enforce any lien created by this instrument. The Construction Group, and each of its appointed members, shall have an election and right, but not an obligation or duty, to enforce these Covenants and Restrictions by a proceeding or proceedings at law or in equity. Notwithstanding any provision to the contrary in this Declaration. Declarant shall not have any duty, obligation, or responsibility to enforce any of these Covenants and Restrictions. Failure by any party to enforce any Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the nonprevailing party. Further, and with respect to any litigation brought against the Construction Group, the Board or any of their members or representatives arising out of any action, failure to act, or performance or non-performance of duties imposed hereby, by the Construction Group, the Board or their members or representatives, the Construction Group, the Board and/or their members or representatives so sued shall be entitled to recover their reasonable attorneys' fees from the person or entity bringing such action against it or them, unless the Construction Group, the Board or their members or representatives shall specifically be adjudicated liable to such claimant.

11.04 Imposition of Violation Fines. In the event that any person fails to cure (or fails to commence and proceed with diligence to completion) the work necessary to cure any violation of the Covenants and Restrictions contained herein within ten (10) days after receipt of written notice from the Board designating the particular violation, the Board shall have the power and authority to impose upon that person a fine for such violation (the "Violation Fine") not to exceed five hundred dollars (\$500.00). If, after the imposition of the Violation Fine, the violation has not been cured or the person has still not commenced the work necessary to cure such violation, the Board shall have the power

and authority, upon ten (10) days written notice, to impose another Violation Fine which shall also not exceed five hundred dollars (\$500.00). There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a person for the same violation. The Violation Fines, together with interest at the highest lawful rate per annum and any costs of collection, including attorneys' fees, shall be a continuing lien upon the Lot against which such Violation Fine is made and shall be enforceable as a lien under Section 6.08.

11.05 Severability. If any one of these Covenants or Restrictions is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining Covenants and Restrictions shall not be affected thereby.

11.06 Headings. 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.

11.07 Notices to Owners. Any notice required to be given to any 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 an Owner on the records of the Association at the time of such mailing.

11.08 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 of Directors, whose reasonable determination shall be final and binding upon all Owners.

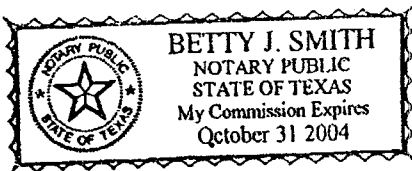
IN WITNESS WHEREOF, ENNIS PINEHURST HOMEOWNERS ASSOCIATION, INC., being the Declarant herein has caused this instrument to be executed this 10 day of AUGUST, 2003.

ENNIS 71 DEVELOPMENT, L.L.C.

By: 
HAROLD JONES, Manager

STATE OF TEXAS §
 §
COUNTY OF ELLIS §

This instrument was acknowledged before me on this 10th day of August, 2003 by a HAROLD JONES, Manager of ENNIS 71 DEVELOPMENT, L.L.C, on behalf of said corporation.



Betty J. Smith
Notary Public in and for
the State of Texas

AFTER RECORDING RETURN TO:
McCARTY, WILSON & MASH, P.C.
ATTORNEYS AND COUNSELORS AT LAW
Alma Moore Bldg.
107 S. Gaines St.
P.O. Box 580
Ennis, Texas 75120

FILED RE RECORD - ELLIS COUNTY, TX
Inst No: 0407011
ON MAR 05, 2004 @ 09:05:00 AM

02016 1478
VOL. PG.

VOL. 02086 0035
PG.

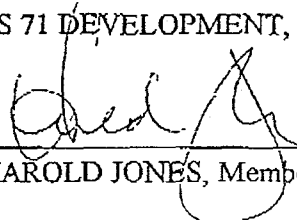
STATE OF TEXAS §
§
COUNTY OF ELLIS §

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ENNIS PINEHURST HOMEOWNERS ASSOCIATION, INC.

The undersigned Declarant, ENNIS 71 DEVELOPMENT, L.L.C. does hereby amend Article IX, Section 9.02 (a) of the Declaration of Covenants, Conditions and Restrictions of Ennis Pinehurst Homeowners Association, Inc. dated August 10, 2003 and filed in Volume 2016, Page 1445 of the Official Public Records of Ellis County, Texas as follows:

- A. Section 9.02(a) of Article IX shall be amended and shall henceforth read as follows:
 - (a) Zero lot line lots 1600 square feet all other lots 1850 square feet

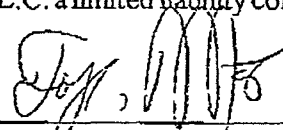
Executed this 8 day of December, 2004.

DECLARANT
ENNIS 71 DEVELOPMENT, L.L.C.
By: 
HAROLD JONES, Member

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF ELLIS §

This instrument was acknowledged before me on 8 day of December, 2004, by HAROLD JONES, Member on behalf of Ennis 71 Development, L.L.C. a limited liability company on behalf of said company.


Notary Public in and for the State of Texas

h:\documents\rel03\en-ennispinhurst\amendres

AFTER RECORDING RETURN TO:
McCARTY, WILSON & MASH, P.C.
ATTORNEYS AND COUNSELORS AT LAW
Alma Moore Bldg.
107 S. Gaines St.
P.O. Box 580
Ennis, Texas 75120

FILED FOR RECORD - ELLIS COUNTY, TX
Inst No. 0437900
09 Dec 09, 2004 @ 10:11:00 AM

02086 0036
VGL
PG.