

#5707

206342

~~205284~~

508-585

SECOND AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
RADIANCE PHASE I

FILED
HAYS COUNTY, TEXAS
85 MAR 29 PM 4 51

512 584

STATE OF TEXAS
COUNTY OF HAYS

KNOW ALL MEN BY THESE PRESENTS:
COUNTY CLERK

WHEREAS, Ideal Village Development Cooperative of Austin, a Texas corporation, hereinafter referred to as the "Declarant", is the Owner of all that real property described in Article III of this Declaration;

WHEREAS, the Declarant intends to convey, and will convey, the real property described in Article Three hereof, together with such additions as may hereafter be made thereto (as provided in Article Three hereof); and

NOW, THEREFORE, it is hereby declared that the real property described in Article Three hereof is and shall be held, sold and conveyed subject to the following easements, covenants, conditions, restrictions, liens and charges, which are for the purpose of protecting the value and desirability of said property, and which shall supersede the provisions of that certain Declaration of Covenants, Conditions and Restrictions and of that certain Amended Declaration of Covenants, Conditions and Restrictions recorded respectively in Volume 401, pages 243-253 and Volume 425, pages 638-648 of the Deed Records of Hays County, Texas, and which shall run with the land and be binding upon any and all persons having any right, title or interest in or to the said property or any part thereof, or their legal representatives, heirs, successors and assigns, and which shall inure to the benefit of each Owner thereof.

ARTICLE ONE - DEFINITIONS

1. ASSOCIATION. "Association" shall mean and refer to Radiance Property Owners' Association, Inc., a Texas nonprofit corporation, which Declarant shall cause to be incorporated, its successors and assignees.
2. COMMON PROPERTIES. "Common Properties" shall mean and refer to all property (including the improvements thereto) owned, leased or held by the Association for the purposes of safety, transportation, communication, recreation, landscaping or security for the common use and benefit of its Members, including, but not limited to streets and roads which have been completed but have not been accepted by the appropriate governmental entity for maintenance.
3. DECLARANT. "Declarant" shall mean and refer to Ideal Village Development Cooperative of Austin, a Texas non-profit corporation and its successors and assigns.
4. LOT. "Lot" shall mean and refer to each and any of the plots of lands shown on the Subdivision plat(s) or any resubdivisions thereof on which plot of land there is or will be built a residential dwelling, including detached dwelling lots and garden home lots. The term "Lot" shall not include any reservations on said plat(s) or Lots 19A, 20, 21, 22, 23A or 24.
5. DETACHED UNIT LOT. "Detached Dwelling Lot" shall mean and refer to Lots 1 through 18 as set forth on the recorded subdivision plat, on which there is or will be built a single-family detached dwelling.
6. GARDEN HOME LOT. "Garden Home Lot" shall mean and refer to Lots D-1 through D-18, as created by resubdivision within and as part of the areas designated on the original recorded plat as Lots 19 and 23, on which Lots (sites) a single-family garden home is or shall be constructed contiguous to another such attached garden home on an adjacent such Lot.
7. MEMBER. "Member" shall mean and refer to every person or entity who holds membership in the Association.

8. OWNER. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a Lot on which there is or will be built a detached single-family dwelling or an attached garden home unit, including contract purchasers.

9. SUBDIVISION. "Subdivision" shall mean and refer to Radiance Phase I, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 2, pages 397-399 of the Plat Records of Hays County, Texas, and all resubdivisions thereof and subsequent phases of Radiance being or to be developed by Declarant and brought within the scheme of this Declaration.

ARTICLE TWO - PURPOSE

The Subdivision is hereby encumbered by the covenants, conditions and restrictions hereinafter set forth to ensure the best and highest use and the most appropriate development and improvement of each Lot within the Subdivision for residential or other purposes; to protect the Owners of Lots against the improper use of surrounding Lots; to preserve, so far as practicable, the natural beauty of the Subdivision; to encourage and secure the erection of attractive, appropriately located improvements on each Lot; to secure and maintain the proper use of easements within the Subdivision; to preserve the lines of sight and views from the Lots and, in general, to provide for development of the highest quality to enhance the value of the investment made by Owners in purchasing Lots and homes in the Subdivision.

ARTICLE THREE - PROPERTY SUBJECT TO THIS DECLARATION

1. DESCRIPTION. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration consists of all of Radiance Phase I, a subdivision in Hays County, Texas, according to the map or plat thereof recorded in Book 2, Pages 397-399 of the Plat Records of Hays County, Texas (and any subsequently recorded plats including resubdivisions thereof).

2. MINERAL EXCEPTION. There is hereby excepted from the Subdivision and Declarant will hereafter except from all its sales and conveyances of the Lots, all oil, gas and other minerals in, on and under the Lots.

3. ADDITIONAL LANDS. The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development (including, without limitation, subsequent phases of the Radiance Subdivision) upon the approval of the Board of Trustees of the Association, in its sole discretion. Any additions authorized under this subsection shall be made by filing of record a Supplemental Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such property, and the execution thereof by a majority of the members of the Board of Trustees of the Association shall constitute all requisite evidence of the required approval thereof by such Board of Trustees. Such Supplemental Declaration must impose an annual maintenance charge assessment on the property covered thereby, on a basis substantially equivalent to the maintenance charge and assessment structure imposed by this Declaration, and may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be applicable to the additional lands.

ARTICLE FOUR - PROPERTY RIGHTS

1. OWNERS' EASEMENTS OF ENJOYMENT. 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 Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Properties;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(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 or non-profit corporation 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 an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of Members has been recorded.

2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his immediate family, his tenants, or contract purchasers who reside on his Lot.

3. PARKING RIGHTS. Ownership of each Garden Home Lot shall entitle the Owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two vehicle parking spaces for each dwelling.

ARTICLE FIVE - RADIANCE PROPERTY OWNERS' ASSOCIATION, INC.

1. CREATION. The Association has been formed for the purposes, charged with the duties and vested with the powers prescribed by law or set forth in the Articles of Incorporation and Bylaws thereof. Neither the Articles nor the Bylaws of the Association shall, for any reason, be inconsistent with the provisions of this Declaration. In the event of inconsistency between this Declaration and the Articles of Incorporation and/or Bylaws of the Association, the terms of this Declaration shall be controlling.

2. MEMBERSHIP.

(a) Every Owner (including the Declarant) of a Lot within the Subdivision shall automatically become a Member of the Association.

(b) Membership shall be appurtenant to and shall not be separated from Lot ownership. Membership shall be in accordance with the Articles and Bylaws of the Association.

3. VOTING RIGHTS.

(a) The Association shall have two classes of voting membership:

(i) Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned.

(ii) The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier to occur of January 1, 1990, or such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

(b) Upon the resubdivision by Declarant of any lot into more than one Garden Home Lot, each such Garden Home Lot created by resubdivision shall qualify its Owner for voting privileges pursuant to the above classifications. No resubdivision shall be effective, for purposes of these Restrictions, unless the same is approved both by the Committee and by the appropriate governmental entity in accordance with the requirements of Article 974a, Texas Revised Civil Statutes, and duly recorded in the Plat Records of Hays County, Texas.

(c) When more than one person or entity holds a fee simple interest in any Lot, all such persons or entities shall be Members. The vote for such Lot may be exercised as the Owners thereof mutually agree, but in no event shall the vote for such Lot exceed the total share vote to which each Lot is entitled as herein provided.

(d) Any Member in default in the payment of any assessment or the performance of any obligation imposed by this Declaration shall not be entitled to vote at any meeting of the Association so long as such default remains in existence.

(e) Notwithstanding anything to the contrary contained herein, until such time as Declarant has sold and conveyed seventy-five percent (75%) of the Lots in the Subdivision, each Lot owned by Declarant shall be entitled to three (3) votes on all matters subject to voting approval of the Members of the Association.

ARTICLE SIX - MAINTENANCE AND ASSESSMENTS BY PROPERTY OWNERS' ASSOCIATION

1. COMMON PROPERTY MAINTENANCE. The Association shall maintain, preserve and operate the Association's Common Properties to the extent and the effect that the Association's Board of Trustees deems appropriate from time to time. The Association's responsibility to preserve Common Properties shall include, without limitation, an obligation to pay all taxes assessed against such Common Properties.

2. EXTERIOR MAINTENANCE OF LOTS. It shall be the responsibility of each Owner to properly maintain in good repair, condition and appearance according to the criteria, schedules and notices published or delivered by the Association, the following exterior maintenance items and areas on his Lot: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, windows, doors, decks, trees, shrubs, grass, walks, and other exterior improvements situated on the Lots. Courtyard and parking areas contiguous to but not part of such Lots shall be maintained by the Association as Common Properties of the Association. If either (i) in the sole discretion of the Committee or another group specifically and appropriately so empowered by the Board of Trustees, an Owner has failed to provide such exterior maintenance in a proper and timely fashion; or (ii) a dispute should arise between two or more Owners as to the proper exterior maintenance or allocation and payment of expenses related thereto, then: the Association shall be responsible to promptly notify the affected Owner(s) and make such repairs as it deems proper, the cost of which maintenance or repair shall, at the election of the Committee, be added to and become an additional part of the Owner's Annual Assessment as established in Article Six, paragraph 3 hereunder, or be immediately charged to and paid by the Owner.

3. ASSESSMENTS ESTABLISHED. Each Owner of any Lot in the Subdivision, by acceptance of a deed and/or contract for deed therefor, whether or not it shall be so expressed in such deed and/or contract, is deemed to covenant and agree to pay to the Association: (i) Regular Annual Assessments or charges, (ii) additions to Regular Annual Assessments pursuant to Article Six, paragraphs 2 and 14 hereunder, and (iii) any special assessments which may be levied as the result of any capital improvement or maintenance expense incurred by the Association, including without limitation pursuant to Article Six, paragraphs 2, 13 and 14 and Article Nine, paragraph 27 of this Declaration. Such assessments shall be established and collected as hereinafter provided.

4. PURPOSES OF REGULAR ANNUAL ASSESSMENTS. The Regular Annual Assessments levied by the Association shall be used to maintain, preserve and operate the Association's Common Properties for the benefit of its Members. Such purposes shall include, but not be limited to: providing utility services to Common Properties; paying ad valorem taxes on Common Properties; providing for the maintenance of streets, roads, parking areas, thoroughfares and bridges which have not been completed but have not been accepted by the appropriate governmental entity for maintenance; maintaining and preserving landscaped and/or recreational areas in the Common Properties; and creating reasonable reserves for the future construction, maintenance, preservation and operation of Common Properties.

5. AMOUNT OF REGULAR ANNUAL ASSESSMENTS. The Declarant shall establish an initial budget for the Association; thereafter, the Association shall make a reasonable effort to establish a budget on or before December 1st of each year for the following calendar year. Such budget shall include an estimate of all expenses and reserves for which such Association shall be responsible. The resulting annual budget shall be prorated among the Members of such Association by way of Regular Annual Assessments in accordance with the provisions of this Declaration. The initial Regular Annual Assessment as fixed by Declarant for each Lot subject to assessments shall be two hundred forty dollars (\$240.00).

6. BASIS OF ASSESSMENTS. Regular Annual Assessments shall be fixed in accordance with Article Six, paragraph 11 hereof and may, at the discretion of the Board of Trustees, be collected on an annual, semi-annual, quarterly or monthly basis, according to such notice and prepayment discount schedule (if any) as shall be fixed and published by the Board of Trustees.

7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The Annual Assessments provided for herein shall commence on the first day of the first month following the conveyance of such Lot from Declarant to an Owner, shall be prorated according to the number of months remaining in the initial year of ownership, and shall continue thereafter at the full Annual Assessment rate at the discretion of the Association. The initial Annual Assessment to be levied by the Association shall be as fixed by Declarant in Article Six paragraph 5 hereof; thereafter, the Association's Board of Trustees shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days prior to January first of each calendar year and written notice of the amount of such assessments shall be sent to the Owner of every Lot subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether or not the assessments on a Lot have been paid.

8. PERSONAL OBLIGATION AND LIEN; REMEDIES OF THE ASSOCIATION FOR NONPAYMENT. There is hereby imposed a continuing lien on each Lot in the Subdivision to secure the payment of any regular, additional or special assessment authorized hereunder, including any assessment resulting from maintenance expense incurred by the Association, the Declarant or the Committee pursuant to Article Six, or to Article Nine, paragraph 27 hereof, and such lien shall, to the fullest extent permitted by law, bind such Lot or Lots in the hands of the then Owner, and such Owner's heirs, devisees, personal representatives, successors and assigns. Any assessment authorized hereunder not paid on or before the date due shall be deemed delinquent. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the Owner of such property at the time when such assessment falls due. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may either (i) bring an action at law against the Owner personally obligated to pay the same, or (ii) foreclose said lien against the Lot, or (iii) both; and, in such event, there shall be added to the amount of such assessment interest as provided herein and all costs of collection, including reasonable attorneys' fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of any Common Property or by abandonment of such Owner's Lot.

9. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien to secure payment of the assessments and maintenance fees provided for herein shall be subordinate to the lien of any first mortgage on a Lot. Sale or transfer of any Lot shall not affect the validity of an assessment lien hereunder. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall, however, extinguish the lien to secure payment of such assessments which become due prior to such sale or transfer. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien securing the payment thereof. No extinguishment of any lien shall relieve the delinquent Owner from his personal obligation and liability for payment of the fee or assessments therefor secured by that lien.

10. EXEMPT PROPERTY. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

- (i) All property dedicated and accepted by any local governmental authority and devoted to public use; and
- (ii) All Common Properties; and
- (iii) All Lots owned by the Declarant, provided, however, the Declarant shall have the obligation to pay from time to time, such sums as Declarant, in its judgment, determines to be its pro rata portion (based upon the number of Lots owned by Declarant) of the expenses paid by the Association from the assessments authorized hereunder.

11. CALCULATION OF ASSESSMENTS BY LOT. The ratio of the assessments made against each Lot by the Association shall be the same as the ratio of one (1) to the total lot denominator as hereinafter defined. The "total lot denominator" shall initially be 36, and shall be recalculated (as the sum of the total number of Garden Home Lots in the Subdivision plus the total number of Detached Unit Lots in the Subdivision), upon the request of the Board of

Trustees in order to reflect resubdivisions or future phases. No diminution or abatement of assessments shall be allowed or claimed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Properties or from the construction, relocation, installation or repair of Common Properties, or from any action taken to comply with any law, ordinance, or order of a governmental authority.

12. MAXIMUM ANNUAL ASSESSMENT. Until January 1, 1986, the Maximum Annual Assessment (exclusive of charges, assessments, and fees described under Article Six, paragraphs 2, 13 and 14 and Article 9, paragraph 7 hereof), shall be four hundred twenty dollars (\$420.00) per Lot.

(a) From and after January 1, 1986, the Maximum Annual Assessment shall automatically be increased each year to be 10% above the Maximum Annual Assessment for the previous year without a vote of the membership.

(b) From and after January 1, 1986, the Maximum Annual Assessment may be increased by more than 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Trustees may fix the Annual Assessment at an amount not in excess of the maximum.

13. SPECIAL ASSESSMENT 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 each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

14. ADDITIONS TO MONTHLY ASSESSMENT. In the event that the need for maintenance or repair of a Lot or the improvements thereon or on the Common Properties is caused through the willful or negligent acts of its Owner, or through the willful or negligent acts of the family, guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such maintenance or repair shall be added to and become part of the next monthly assessment.

ARTICLE SEVEN - RIGHT OF FIRST REFUSAL

1. TERMS OF DECLARANT'S RIGHT OF FIRST REFUSAL. In the event Owner wishes to sell or transfer his interest in his Lot including any improvements thereon and shall have received a bona fide offer therefor from a prospective purchaser, Owner will give Declarant immediate written notice thereof together with an executed copy of such offer and the terms thereof. Declarant shall have the right to purchase the Lot upon the same terms and conditions as set forth in the offer therefor, provided written notice of such election to purchase is given to the Owner by Declarant within 30 days after receipt of the notice from Owner and provided Declarant thereafter effects the purchase prior to the later of: (i) the closing date set forth in the abovementioned bona fide offer, or (ii) 60 days from Declarant's notice to Owner of election to purchase. Such right to elect to purchase the Lot then being sold shall be freely assignable by Declarant. In the event that Declarant shall not elect within the aforesaid 30 day notice period to purchase the Lot, the Owner shall have the right, for a period of 90 days thereafter, to consummate the sale of the Lot on the terms and conditions set forth in the offer and to the person or persons making the offer, after which period the right of first refusal herein set forth shall again apply. The failure of or refusal by Declarant to exercise the right to purchase shall not constitute or be deemed to be a waiver of such right to purchase when the Owner or his assigns receives any subsequent bona fide offer from a prospective purchaser. In the event Owner or his assigns shall attempt to sell the Lot without affording to Declarant the right of first refusal herein provided, such sale shall be wholly null and void and shall confer no title or interest whatsoever upon the intended purchaser.

2. SUBORDINATION TO RIGHTS OF MORTGAGE HOLDER. In no case shall the right of first refusal reserved herein affect the right of the Owner to subject his interest in the Lot to a deed of trust, mortgage or other security instrument. The rights of Declarant and its assigns shall be subordinate to those of deed of trust and mechanic's lien holders. In the event of any default on the part

of the Owner under any first mortgage which entitles the holder thereof to foreclose same, any sale under such foreclosure and any subsequent sales, including delivery of a deed to the first mortgage in lieu of such foreclosure, shall be made free and clear of the right of first refusal provisions and this Article shall thereafter not apply to said Lot.

3. DURATION. The right of first refusal as provided herein shall extend and run for the period of the lives of E. Paul Frels, C. Taylor King, Walter E. Reifslager III, Robert L. Shaw, Justine Williams and Wendy A. Wilkins and the survivor of them plus twenty-one (21) years. Except upon transfer of title to a mortgage, the Purchaser, upon transferring or conveying his interest, shall incorporate in such instrument of conveyance a provision whereby the grantee agrees to carry out the provisions of the "right of first refusal" as provided in this Article.

ARTICLE EIGHT - ARCHITECTURAL AND BUILDING COMMITTEE

1. CREATION. An Architectural and Building Committee (herein sometimes referred to as the "Committee") shall be designated and composed of at least four (4) but not more than six (6) members, to be appointed by Declarant. The following persons are hereby designated as the current members of the Committee: Stephen Burns, Randall Ashelman, Jean Wysong and Mark Warren. Each member of the Committee shall serve for a term of two (2) years, unless such member sooner resigns by giving written notice of resignation to the remaining members of the Committee, or is removed at the direction of Declarant or its successors and assigns. The Committee shall serve at the pleasure of the Declarant, its successors and assigns, and a member of the Committee may be removed for any reason. When ninety percent (90%) of the Lots in the Subdivision are sold and conveyed, Declarant shall delegate the authority to appoint members of the Committee to the Association by written notice, after which time the Board of Trustees of the Association shall have the right to appoint and remove members of the Committee.

2. SUBMISSION AND APPROVAL OF PLANS AND SPECIFICATIONS. A copy of the construction plans and specifications, including exterior views, exterior materials, colors and elevation; a site plan showing the location of any proposed structure or improvement; a landscaping plan; soil percolation test data; and any other information or documents which may be required by the Committee shall be delivered, together with any review fee which is imposed by the Committee in accordance with Article Eight, paragraph 3, to the Committee at the offices of Declarant at Route 6, Box 1008, Austin, Texas 78737, or such other address as may hereafter be designated in writing from time to time, not less than thirty (30) days prior to the date construction on a Lot is to be commenced. No structure or improvement, including but not limited to buildings, fences, walls, landscaping, pools, exterior lighting fixtures, security and emergency communications systems and radio-television antennae, shall be placed or altered on any Lot until the plans and specifications therefor and the builder which the Owner intends to use to construct the proposed structure or improvement have been approved in writing by a majority of the members of the Committee. The Committee may, in reviewing such plans and specifications, consider any information which it deems proper, including, without limitation, any permits or percolation tests which may be required by the Committee or any other entity; information relating to the question of whether any proposed improvement would unreasonably obstruct the view from neighboring Lots; harmony of external design and location in relation to surrounding structures, topography and finished grade elevation; and the identity of the builder which an Owner proposes to use to construct the proposed structure or improvement. The Committee may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Committee, in its sole discretion, may require. A copy of the construction plans and specifications and a site plan showing the location of the proposed structure or improvement, if approved, shall remain in the possession of the Committee until the Subdivision is built out in its entirety. Site plans must be approved by the Committee prior to the clearing of any Lot or the construction of any improvements thereon. The Committee may refuse to approve plans and specifications for proposed improvements on any grounds which, in the sole and absolute discretion of the Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds. In reviewing plans and specifications, the Committee shall consider, but not be limited by, the purposes set forth in Article Two of this

Declaration. The Committee may, in its discretion, waive any or all of the above procedural requirements in connection with improvements to be constructed by Declarant, its contractors or agents.

3. ADOPTION OF RULES. The Committee shall have the authority to adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or appropriate for the performance of its duties hereunder. In addition, the Committee shall have the power and authority to impose a reasonable charge not in excess of \$250 as it deems necessary or convenient for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges shall be held by the Committee and used to defray the administrative expenses incurred by the Committee in performing its duties hereunder; provided, however, that any excess funds held by the Committee shall be distributed to the Association at the end of each calendar year.

4. ACTIONS OF THE COMMITTEE. The Committee may, by resolution unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Committee, except the granting of variances as hereinafter provided. In the absence of such designation, the vote of a majority of all of the members of the Committee taken with or without a meeting shall constitute an act of the Committee.

5. FAILURE TO ACT. In the event that any plans and specifications are submitted to the Committee as provided herein, and the Committee shall fail either to approve or reject such plans and specifications for a period of twenty-one (21) days following such submission, no approval by the Committee shall be required, and approval of such plans and specifications shall be presumed; provided, however, that such twenty-one (21) day period shall not begin to run until all information required to be submitted by the Committee to assist in its review of any plans or specifications has been received by the Committee. Any failure of the Committee to act upon a request for a variance hereunder shall not be deemed a consent to such variance, and the Committee's written approval of all requests for variances shall be expressly required.

6. VARIANCES. The Committee may grant variances from compliance with any of the provisions of this Declaration or any Supplemental Declaration hereinafter placed of record, including, but not limited to, restrictions upon height, size, shape, floor areas, land area, placement of structures, setbacks, building envelopes, colors, materials, or land use, when, in the opinion of the Committee, in its sole and absolute discretion, such variance will not be adverse to the overall development plan for the Subdivision, and such variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any Supplemental Declaration for any purpose except as to the particular property and in the particular instance covered by the variance property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions hereof.

7. DURATION OF APPROVAL. The approval or consent of the Committee of any plans and specifications, whether by action or inaction, and any variances granted by the Committee not stating a different period of effectiveness shall be valid for a period of three (3) months only. In the event construction in accordance with such plans and specifications or variance is not commenced on a Lot within such three (3) month period, the Owner of the Lot shall be required to resubmit such plans and specifications or request for a variance to the Committee, and the Committee shall have the authority to re-evaluate such plans and specifications in accordance with this Article and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval thereof.

8. NO WAIVER OF FUTURE APPROVALS. The approval or consent of the Committee to any plans or specifications for any work done or proposed in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent

as to any plans and specifications, or other matter whatever, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the Committee.

9. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee, nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage or injury arising out of the performance of the Committee's duties under this Declaration, unless such loss, damage, or injury is due to the willful misconduct or bad faith of the Committee or its member, as the case may be.

ARTICLE NINE - LAND USE AND ARCHITECTURAL RESTRICTIONS

1. LAND USE AND BUILDING TYPES. All Lots shall be used only for residential, recreational and community purposes in accordance with these covenants, conditions and restrictions, and no building or improvement shall be erected, altered, placed or permitted to remain on any Lot except as authorized under the terms and conditions hereof. All buildings shall be subject to such height limitations as the Committee may judge necessary to preserve lines of sight and views from neighboring Lots.

2. MINIMUM FLOOR AREA AND ROOFS. Any single-family dwelling constructed on a Detached Unit Lot must have a first floor area of not less than 800 square feet, and total area of not less than 1,200 square feet, exclusive of open and closed porches or greenhouse solariums, decks, terraces, patios, balconies, driveways and garages. Garden Home dwelling units constructed on Garden Home Lots shall have a minimum total area as shall be designated and required by the Committee.

3. EXTERIOR FINISH MATERIALS. All homes shall be constructed with an exterior facade of at least one-third masonry.

4. SETBACKS. No building shall be located on any of the Lots nearer than twenty (20) feet from any Lot line, street or cul-de-sac. The Committee shall have the right to impose such additional setback requirements as it deems necessary to preserve lines of sight from neighboring Lots. The Committee shall be entitled to review and modify the setback requirements for Lots for which compliance with the foregoing setback requirements might be difficult or impossible.

5. DRIVEWAYS. All private roads and driveways on any Lot shall be adequate in size (including garage and carport area) to properly accommodate at least four (4) parked full-size vehicles, shall be constructed of paving at least in accordance with Hays County road specifications, and shall be properly maintained. All drainage structures under private driveways shall have a net drainage opening area of sufficient size to permit the free flow of water without backwater, and shall be subject to the approval of the Committee.

6. PETS AND LIVESTOCK. No pets, animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that:

(a) Domestic pets may be kept confined at all times inside any residence on a Lot; and

(b) No more than two dogs may be kept for non-commercial purposes for each full Detached Dwelling Lot if fenced in a manner and location acceptable to the Committee, and if never allowed to run at large within the Subdivision. No animal(s) may be kept which, in the sole discretion of the Committee, shall create any health, noise, odor, or other nuisance.

7. CAMPING. No camping shall be allowed without the prior consent of the Committee. No permanent or temporary outdoor latrines shall be allowed.

8. PROHIBITED STRUCTURES. Only in connection with camping allowable under paragraph 7 of this Article shall tents, trailers or motor homes be erected and/or used on any Lot. No other structure of a temporary character, including trailers, basements, tents, shacks, horse trailers, or other out buildings, shall be erected and/or used on any Lot at any time, either temporarily or permanently. No mobile home shall be placed on any Lot at any time, either temporarily or permanently.

9. **COMPLETION OF STRUCTURES.** The exterior of each house or other improvement shall be completed and finished within six (6) months of the earliest to occur of (i) the placement of building materials on the Lot, or (ii) the commencement of foundation work for the structure, or (iii) the commencement of on-site work on the structure itself.

10. **SEWAGE DISPOSAL.** All soil absorption sewage disposal systems must be constructed in conformity with the minimum requirements of the Division of Sanitary Engineering of the Texas State Department of Health and (ii) in conformity with the restrictions outlined on the recorded plat of the Subdivision, and (iii) inspected for compliance by a duly authorized agent of the Hays County Health Department. In addition, no sewage disposal systems or components thereof may be installed on any Lot without the prior written approval of the Committee. The Committee is hereby authorized to consider, without limitation, when evaluating proposed plans for soil absorption sewage disposal systems: (i) the soil percolation rate and known subsurface geology of the proposed drainfield site, (ii) the projected load upon the sewage disposal system in view of the planned number of bedrooms, water conservation devices, etc.; and (iii) the cost and effectiveness of alternative systems. The Committee is hereby authorized to set such standards for acceptable sewage disposal systems in excess of the minimum standards set by appropriate governmental entities as the Committee, in its sole discretion, shall deem necessary to protect the environmental integrity of the Subdivision and the health of its residents. The Committee may approve sewage disposal systems allowing soil absorption of effluence on a properly designated Lot or other area other than the Lot on which the effluence originated.

11. **BUTANE AND FUEL TANKS.** No butane or fuel tank or other structure or facility for the storage of combustible fuels shall be placed or maintained on any Lot unless expressly authorized in writing by the Committee.

12. **FENCES.** Any fence, wall, hedge or other similar structure or improvement shall be approved by the Committee with respect to location, height, type and materials. No wire fence of any type will be permitted. Perimeter fencing will generally not be permitted.

13. **SIGNS.** No signs of any character shall be allowed on any Lot except those approved prior to erection by the Committee for purposes of identification or sale of a Lot or the residence thereon.

14. **TRUCKS, BUSES, TRAILERS AND BOATS.** No bus, semi-trailer, machinery, equipment, or truck larger than a 3/4 ton pickup shall be kept, placed, maintained, constructed, or repaired on or in the street in front of any Lot, except for construction and repair vehicles during the period of construction on a Lot. No motor vehicle of any type shall be constructed or repaired on or in front of any Lot in such manner as to be visible from neighboring property.

Motor homes, recreational house trailers, horse trailers, truck campers, boats, boat trailers and recreational vehicles of any type kept on a Lot shall be kept within a garage or in such a manner as to not be visible from neighboring property. No motorized vehicle of any kind shall be operated in any manner which is dangerous, noisy, or creates a nuisance in the opinion of the Committee.

15. **PARKING.** On-street parking shall be prohibited, except in emergency circumstances. Driveway design and construction shall provide for at least four (4) parking spaces for each Detached Dwelling Lot, inclusive of carport and/or garage space.

16. **DUMPING, RUBBISH, GARBAGE AND STORAGE.** No Lot shall be used or maintained as a dumping ground for rubbish or trash, nor may such materials be buried or burned on any Lot, and all garbage or other waste shall be kept in sanitary containers. All garbage, storage, and disposal containers shall be kept in a clean and sanitary condition, and the location and type of such containers shall be subject to the approval of the Committee.

17. **FIREARMS.** No firearms, fireworks or explosives shall be discharged or openly displayed on any Lot. No hunting, including hunting with bow and arrow, shall be permitted within the Subdivision.

18. **COMMERCIAL ACTIVITIES.** No business, professional, commercial, or trade venture or activity shall be conducted on any of the Lots; provided, however, that model homes and/or temporary offices may be constructed and maintained by Declarant, its successors and assigns, in connection with the development of and the construction and sale of houses in the Subdivision. Subject to the prior written consent of the Committee, which consent is and shall be expressly required, home offices to which the general public is invited, incidental to an Owner's business, may be maintained within such Owner's residence, so long as activities conducted in connection with such home offices do not become an annoyance or nuisance to the neighborhood, in the sole and absolute discretion of the Committee.

19. **ANNOYANCE OR NUISANCE.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the neighborhood, in the sole discretion of the Committee. No clothesline or air conditioner window units shall be visible from a neighboring Lot without the written consent of such neighboring Owner. No unsightly or elaborate radio or television antennae shall be permitted; provided, however, that conventional antennae for normal household radio and television viewing purposes may be maintained, subject to the approval of the Committee as to appearance, height and location. All exterior lighting shall be subject to review and approval by the Committee, and no offensive exterior lighting shall be permitted.

20. **TOXIC SUBSTANCES.** The Committee shall have the right to prohibit the storage and/or application on Lots of those toxic substances including, without limitation, herbicides and pesticides, which, (i) in the sole discretion of the Committee, present an unreasonable hazard to human health or environmental quality due to the location, type or amounts of such storage and/or application, or (ii) create residues detectable outside the lot on which they were applied. In addition, Owners must obtain the Committee's written permission prior to application of herbicides or pesticides other than pesticides in aerosol spray cans available to the general public.

21. **TREES.** No trees having a diameter of five (5) inches or more, measured one foot above natural ground level, shall be removed from any Lot without the consent of the Committee. Any tree stumps and dead branches shall also be promptly removed at the Owner's expense.

22. **SURFACE MINING.** No quarrying or surface mining operations shall be permitted upon or in any Lot.

23. **CREEK AND TRIBUTARY OBSTRUCTIONS.** No obstructions of any type, including, but not limited to, fences, dams, and concrete walkways, shall be placed in, on or across the bed of any creek or drainage course adjoining or running through any Lot in the Subdivision, without the written consent of the Committee.

24. **RESUBDIVISION AND CONSOLIDATION.** Declarant may, upon approval of the Committee and in accordance with Article 974a, Texas Revised Civil Statutes, and without the further requirement for the consent of any Owners within the Subdivision, effectuate the resubdivision of eighteen (18) Garden Home Lots within the areas designated on the original recorded plat as Lots 19 and 23. None of the Lots in the Subdivision shall be resubdivided except on a joint application of Declarant and Owner. Only one single-family dwelling shall be erected on any Detached Unit Lot, provided that garage apartments may be constructed at the discretion of the Committee. An Owner may not consolidate two or more Lots for the purpose of constructing one single-family dwelling thereon.

25. **EASEMENTS.** In accord with and in addition to the easements and setbacks shown and referenced on the plat of record for the Subdivision, there is hereby reserved to Declarant, its successors and assigns: (i) easements on, over and under each Lot for the placement and maintenance of meter boxes, transformer pads, pull bores and other fixtures necessary for or relating to utility lines placed within the public utility easements shown on the plat of record for the Subdivision; (ii) a ten (10) foot wide public utility easement along the front, side and rear lines of each Lot; (iii) a greenbelt and pedestrian easement of location and width designated on the plat of record for facilitating the smooth flow of pedestrian and non-motorized vehicular traffic through the Subdivision, the trails, benches, landscaping and other improvements in which shall be constructed and maintained by the Association without the requirement of Owner consent in regard to said traffic and/or improvements; and (iv) the right of

ingress and egress, for the installation, operation, maintenance, repair, or removal of any utility and other facilities, together with the right of removal of any obstruction that may be placed in such easements which would constitute interference with the use, maintenance, operation or installation of such facilities. An easement is hereby granted to all law enforcement, fire protection, ambulance and other emergency vehicles, and to garbage and trash collection vehicles and other service vehicles to enter upon the Lots in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Lots to render any service.

26. WATER WELLS. Because the lots in the Subdivision shall be served by a central community water system and it is important to protect and preserve the aquifers underlying the Subdivision, private water wells may not be drilled so long as adequate potable water is available through the central system. Water wells may not be drilled without the prior written permission of the Committee and if approved shall be properly located, cased and maintained in order to prevent the contamination or unnecessary depletion of the aquifers underlying the Subdivision, and in no case shall a water well be drilled within one hundred fifty (150) feet of a septic drainage field. Each Owner shall promptly provide the Committee with a driller's log of any well drilled on the Owner's Lot. No water shall be transported for commercial purposes off the premises, and houses within the Subdivision shall be constructed with such water-conservation devices as the Committee from time to time may prescribe.

27. MAINTENANCE REQUIREMENTS. In the event the Owner of any Lot shall fail to maintain such Lot and the improvements situated thereon in a neat and orderly manner, the Association, acting through the Committee, its agents and employees, shall have the right to enter upon said Lot and to repair, maintain, and restore the Lot and exterior of any and all buildings and other improvements erected thereon at the expense of Owner. The Committee shall have the sole authority to make a determination as to the acceptability of the maintenance and appearance of any Lot. In the event that the Association or the Committee incurs any expense in maintaining all or any portion of a Lot, the costs thereof shall be charged to and paid by the Owner of such Lot. If such Owner fails to pay such costs upon demand, such costs shall be added to and become a portion of the assessment to which such Lot is subject. Furthermore, the Association shall have the right to maintain an action in a court of appropriate jurisdiction to recover any sums so expended and reasonable attorneys fees. In addition, the Association shall be entitled to pursue the remedies set forth in Article Six, paragraphs 2 and 14 of this Declaration.

ARTICLE TEN - PARTY WALLS

1. GENERAL RULES OF LAW TO APPLY. Each wall or fence which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall, such allocation to be determined by the Committee in the event of dispute.

3. DESTRUCTION BY FIRE OF OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. WEATHERPROOFING. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, any party may notify the Committee of such dispute, and the decision shall be by the Committee after consulting with the parties involved.

ARTICLE ELEVEN - GENERAL PROVISIONS

1. ENFORCEMENT. The Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions and reservations now or hereafter imposed by the provisions of this Declaration or any Supplemental Declaration. Any failure to enforce the covenants and restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter, and any violation of these covenants shall not affect the lien of any mortgage or deed of trust or of any secured party. Any person or entity found by a court of appropriate jurisdiction to be in violation of this Declaration shall be liable to the party seeking to enforce this Declaration for all costs, expenses and reasonable attorneys fees incurred in connection with the enforcement hereof.

2. SEVERABILITY. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provision hereof, and all such other provisions shall remain in full force and effect.

3. AMENDMENT AND DURATION. The covenants, conditions and restrictions of this Declaration may be amended or changed by written instrument duly recorded in the Hays County Deed Records and signed by not less than three-fourths (3/4) of the then Owners of the Lots in the Subdivision, The covenants, conditions and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any Lot subject to this Declaration and their respective legal representatives, heirs, successors and assigns and, unless amended as provided herein, shall be effective for a term of twenty (20) years from the date this Declaration is recorded. After such twenty (20) year period, said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless amended as provided herein.

EXECUTED AND ADOPTED AS AMENDED, this 20th day of March A.D., 1985

IDEAL VILLAGE DEVELOPMENT COOPERATIVE OF AUSTIN,
a Texas Non-Profit Corporation, Declarant, Owner
Lots 3-9,12,13,15,D-1 - D-18

By: Walter Reifslager III, Pres.
Walter Reifslager III, President

By: Edward A Fasanella
Edward Fasanella, Owner, Lot 2

By: E. Paul Frels
E. Paul Frels, Owner, Lot 10

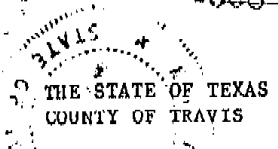
By: Laurie McKay
Laurie McKay, Owner, Lot 11

By: Walter Reifslager III
Walter Reifslager III, Owner, Lot 17

By: Amy L. Moss
Amy L. Moss, Owner, Lot 18

By: Steven B. Klayman
Steven Klayman, Owner, Lot 1

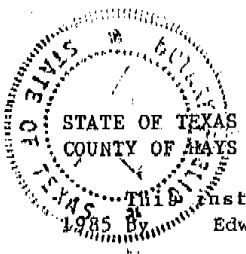
By: James B. Williams
James B. Williams, Owner, Lot 16



Before me, the undersigned authority, on this day personally appeared Walter Reifslager III, President of IDEAL VILLAGE DEVELOPMENT COOPERATIVE OF AUSTIN, a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, and in the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 28th day of March, 1984.

Laurie Edwards
LAURIE EDWARDS, Notary Public,
Travis County, Texas
My Commission expires 10-11-88



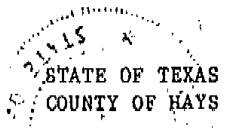
This instrument was acknowledged before me on the 28th day of March, 1985 by Edward Fasanella.

Joe N. Baker
Notary Public, State of Texas
Notary's Name Printed: JOE N. BAKER
Notary's commission expires: 2-28-89



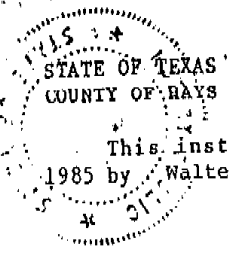
This instrument was acknowledged before me on the 28th day of March, 1985 by E. Paul Frels.

Joe N. Baker
Notary Public, State of Texas
Notary's Name Printed: JOE N. BAKER
Notary's commission expires: 2-28-89



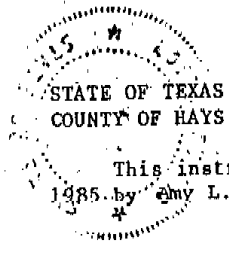
This instrument was acknowledged before me on the 28th day of March, 1985 by Laurie McKay.

Laurie Edwards
Notary Public, State of Texas
Notary's Name Printed: LAURIE EDWARDS
Notary's commission expires: 10-11-88



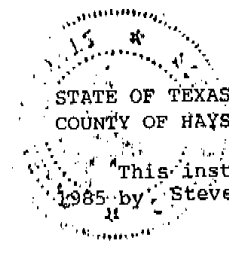
This instrument was acknowledged before me on the 28th day of March, 1985 by Walter Reifslager III.

Lauri Edwards
Notary Public, State of Texas
Notary's Name Printed: Lauri EDWARDS
Notary's commission expires: 10-11-88



This instrument was acknowledged before me on the 28th day of March, 1985 by Amy L. Moss.

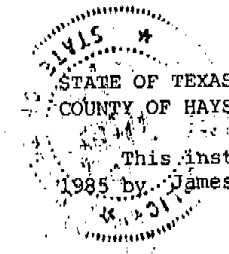
Lauri Edwards
Notary Public, State of Texas
Notary's Name Printed: Lauri EDWARDS
Notary's commission expires: 10-11-88



This instrument was acknowledged before me on the 28th day of March, 1985 by Steven Klayman.

Lauri Edwards
Notary Public, State of Texas
Notary's Name Printed: Lauri EDWARDS
Notary's commission expires: 10-11-88

68-600-



This instrument was acknowledged before me on the 28th day of March, 1985 by James B. Williams.

Lauri Edwards
Notary Public, State of Texas
Notary's Name Printed: Lauri EDWARDS
Notary's commission expires: 10-11-88

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the INDEXED RECORDS of Hays County, Texas, as stamped hereon by me.

APR 1 8 1985



James B. Clayton
COUNTY CLERK
HAYS COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF HAYS
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the INDEXED RECORDS of Hays County, Texas, as stamped hereon by me.

APR 1 1985



James B. Clayton
COUNTY CLERK
HAYS COUNTY, TEXAS

FILED
HAYS COUNTY TEXAS
APR 17 1985
COUNTY CLERK