

CAUSE NO. C-2007-00259

PECAN PLANTATION  
UNINCORPORATED ASSOCIATION  
OF CONCERNED PROPERTY OWNERS,  
ET AL.

Plaintiffs

VS.

PECAN PLANTATION OWNERS  
ASSOCIATION, INC.

Defendant

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IN THE DISTRICT COURT

355<sup>TH</sup> JUDICIAL DISTRICT

HOOD COUNTY, TEXAS

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant/Counter-Plaintiff PECAN PLANTATION OWNERS ASSOCIATION, INC. (“PPOA”) files this Motion to Dismiss for Lack of Jurisdiction as to Plaintiffs/Counter-Defendants’ (“Plaintiffs”) claims, and would respectfully show the following:

**I. SUMMARY OF MOTION**

In an attempt to create a controversy, Plaintiffs filed suit against their homeowners association, PPOA, because PPOA sent a letter to homeowners reminding them to comply with the Declarations & Restrictions (“Declarations”) related to the storage of recreational vehicles (“RVs”) at their home. In this suit, Plaintiffs attempt to prevent PPOA from enforcing the Declaration against them **IF AND WHEN** they decide to violate the Declarations at anytime in the future. Since PPOA has not and had not found that any Plaintiff has violated any Declarations, no justiciable controversy exists. Without justiciable controversy, the ripeness doctrine precludes this Court from having jurisdiction over this matter.

**II. PROCEDURAL HISTORY**

This case involves causes of action relating to Declarations applicable to Units 1-18 of

Pecan Plantation in Hood and Johnson Counties, Texas.

In or about March of 2007, Plaintiffs (residents within Units 1-18 of Pecan Plantation) filed their Original Petition, which has been amended and supplanted by Plaintiffs' Third Amended Petition. PPOA requests that the Court take Judicial Notice of the Contents of the Court's official file in this cause.

### **III. EVIDENCE**

The following evidence supports this Motion to Dismiss for Lack of Jurisdiction and is fully incorporated herein for all purposes:

1. **Exhibit "A"** is the Affidavit of Michael Bartholomew;
2. **Exhibit "A-1"** is the Restrictive Covenants;
3. **Exhibit "A-2"** are excerpts of the Bylaws of PPOA; and
4. **Exhibit "A-3"** are excerpts of the Rules and Regulations of PPOA.

### **IV. MOTION TO DISMISS FOR LACK OF JURISDICTION: RIPENESS**

#### **A. The Law of Ripeness.**

Ripeness is a threshold issue that implicates subject-matter jurisdiction. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The ripeness doctrine asks whether, at the time a lawsuit is filed, the facts are sufficiently developed so that an injury has occurred or is likely to occur, rather than being contingent or remote. *Id.* "Ripeness thus focuses on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all. **A case is not ripe if its resolution depends on contingent or hypothetical facts, or upon events not yet come to pass.**" *Id.* (Emphasis added.)

Similarly, the purpose of a declaratory judgment action is to provide a procedural device whereby litigants may obtain a judicial determination of a dispute. If a justiciable controversy

exists, the trial court has jurisdiction to entertain the declaratory action, and declaratory relief subsequently granted is not merely advisory. *Bexar-Medina-Atascosa Counties Water Control & Improvement Dist. No. 1 v. Medina Lake Protection Ass'n*, 640 S.W.2d 778, 779-80 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.). To constitute a justiciable controversy, there must be a real and substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute. *Bonham State Bank v. Beadle*, 907 S.W.2d 467 (Tex. 1995).

**B. Plaintiffs' Claims Are Not Ripe and Jurisdiction is Lacking.**

**i. The Bylaws and Rules and Regulations of PPOA.**

With respect to the enforcement of Restrictive Covenants, PPOA's Bylaws provide that:

- (1) The Board of Directors ("Board") may fix, levy and collect assessments or charges for, but not limited to, enforcing the Declarations and Restrictions applicable to Units 1-18 of Pecan Plantation. (Exhibit A-3, Bylaws art. 13, §§ 1, 3).
- (2) The Board may suspend or revoke the membership rights of any member who fails to comply with applicable Restrictive Covenants, but only after the member involved has been given an opportunity to appear before the board to explain the non-compliance. (Exhibit A-3, Bylaws art. 5, § 5).

**ii. Without Any Actionable Conduct by PPOA, Plaintiffs' File Suit.**

In or about March of 2007, Plaintiffs filed this lawsuit though PPOA had not initiated any enforcement action against any Plaintiff related to storing RVs on their property.

**a. Plaintiffs' Breach of Contract Claims.**

Plaintiffs allege PPOA breached the applicable Restrictive Covenants by attempting to:

- (1) usurp the duties exclusively granted to the ACC to approve and/or deny a PPOA property owner's site and building plan proposals;
- (2) ordering that all "RVs, golf cars, trailers, boats and other such vehicles" be removed from all properties located in PPOA; and

- (3) fining owners in Units 1 through 18 if they park their “RVs, golf carts, trailers, boats and other such vehicles” on their property. (Pls’ 3<sup>rd</sup> Am. Pet. pg. 35-36 ¶¶ 5.2, 5.5).

Since PPOA has not initiated any enforcement action against any Plaintiff, it impossible for PPOA to have breached any contract with the Plaintiffs.

**b. Plaintiffs’ Declaratory Judgment Claims.**

Also, Plaintiffs request that the Court declare that:

- (1) the applicable Declarations grant exclusive authority to the ACC to approve or deny proposed site and building plans for properties located in PPOA;
- (2) PPOA has allegedly breached the applicable Restrictions/Declarations in attempting to remove all RVs, golf carts, trailers, boats and other such vehicles from Units 1-18;
- (3) PPOA has waived any applicable covenant that might restrict or deny the parking of all RVs, golf carts, trailers, boats and other such vehicles from Units 1-18;
- (4) PPOA breached the Declaration in attempting to fine property owners if they park their all RVs, golf carts, trailers, boats and other such vehicles on their property;
- (5) the applicable provisions of the Declaration clearly and unambiguously preclude owners from parking all RVs, golf carts, trailers, boats and other such vehicles on the properties within Units 1-18;
- (6) PPOA is estopped from enforcing any applicable provision of the Declaration found to preclude property owners from parking all RVs, golf carts, trailers, boats and other such vehicles on the properties;
- (7) the applicable statute of limitations bars PPOA from enforcing any provisions of the Declarations found to preclude parking RVs, golf carts, trailers, boats and other such vehicles on the properties;
- (8) the equitable doctrine of laches prevents PPOA from enforcing any applicable provisions of the Declaration found to preclude property owners from parking RVs, golf carts, trailers, boats and other such vehicles on the properties (Pls’ 3<sup>rd</sup> Am. Pet. pg. 34 ¶ 5.3(8)); and
- (9) PPOA’s alleged decisions to preclude property owners from parking “RVs, golf carts, trailers, boats and other such vehicles on the properties” is arbitrary, capricious and/or discriminatory and therefore allegedly unreasonable pursuant to Texas Property Code Section 202.004. (Pls’ 3<sup>rd</sup> Am. Pet. pg. 34 ¶¶ 5.3(1)-(9)).

Since PPOA has not initiated any enforcement action, the Plaintiffs engage in pure speculation about future events when it asks the court to find that PPOA, on some speculative, unknown future date, would engage in enforcement action against them. Further, the Plaintiffs engage in pure speculation about future events when it asks this court to find that PPOA, at some future date, would find that Plaintiffs violated the Declarations on some future date.

**iii. Ripeness Doctrine Precludes Jurisdiction.**

**a. The Facts Necessary for Ripeness Do Not Exist.**

The following present facts demonstrate the speculative nature of Plaintiffs' pleadings:

- (1) PPOA has not and had not, by any official action cited any of the Plaintiffs for any violations of the Restrictive Covenants relevant to this lawsuit; and
- (2) PPOA has not and had not, by any official action fined any of the Plaintiffs for any violations of the Restrictive Covenants relevant to this lawsuit;
- (3) PPOA has not and had not, by any official action cited any of the Plaintiffs for any violations of the Restrictive Covenants relevant to this lawsuit;
- (4) PPOA has not and had not made any findings relevant to Plaintiffs' claims with respect to the storing or parking of "RVs, golf carts, trailers, boats and other such vehicles on the properties" as alleged by Plaintiffs;
- (5) PPOA has not and had not issued any citations to Plaintiffs for storing or parking of "RVs, golf carts, trailers, boats and other such vehicles on the properties" as alleged by Plaintiffs;
- (6) PPOA has not and had not assessed any fines to Plaintiffs for storing or parking of "RVs, golf carts, trailers, boats and other such vehicles on the properties" as alleged by Plaintiffs;
- (7) No hearings or administrative procedures have been instituted with respect to Plaintiffs for storing or parking of "RVs, golf carts, trailers, boats and other such vehicles on the properties" as alleged by Plaintiffs;
- (8) Prior to their alleged explanations discovered in this lawsuit, no explanations of non-compliance were requested by PPOA or provided by Plaintiffs with respect to Plaintiffs for storing or parking of "RVs, golf carts, trailers, boats and other such vehicles on the properties" as alleged by Plaintiffs;

- (9) No PPOA administrative appeal processes have been instituted or adjudicated pursuant to the Rules and Regulations and Bylaws of PPOA; and
- (10) No Plaintiff has submitted any application for site or building plan approvals for which PPOA's Board of Directors has not approved or denied in what is contended by Plaintiffs as being a "usurpation" of power of the ACC.

In sum, the essential facts necessary to adjudicate Plaintiffs' claims are speculative, contingent and remote because they involve future events. This Court cannot speculate about future events to render its judgment.

**iv. Plaintiffs' Assumptions.**

Plaintiffs, through their pleadings, **assume:**

- (1) That PPOA, by and through its enforcement and administrative due process procedures set forth in the Bylaws and Rules and Regulations, will conclude that each and every of the Plaintiffs are in violation of a Restrictive Covenant;
- (2) That PPOA will attempt to enforce the restrictions upon each of the Plaintiffs;
- (3) That PPOA will submit violation notices to each and every of the Plaintiffs as to their respective violations;
- (4) That PPOA will fine each and every of the Plaintiffs for their respective and individual conduct in violation of the deed restrictions;
- (5) That each Plaintiff will wholly fail in the various non-compliance appeal procedures set forth in the Bylaws and Rules and Regulations of PPOA;
- (6) That these aforementioned hypothetical actions and enforcements of the Restrictive Covenants will be an arbitrary, capricious or discriminatory enforcement, and/or
- (7) That PPOA's Board of Directors has "usurped" various duties exclusively granted to the ACC to approve and/or deny a PPOA property owner's site and building plan proposals.

Each of these assumptions is based on future events and forms the heart of Plaintiffs' claims. As a result, any judgment on Plaintiffs' claims would be merely advisory, again triggering the ripeness doctrine.

**C. Alternatively, This Court Should Refrain from Rendering Judgment.**

“Though a district court has jurisdiction to grant declaratory relief, nevertheless, the court may refuse to enter a declaratory judgment where such judgment, if entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” *Sub-Surface Construction Co. v. Bryant-Curington, Inc.*, 533 S.W.2d 452 (Tex. Civ. App.—Austin 1976, writ ref’d n.r.e.). Plaintiffs seek relief based upon future hypothetical or contingent. Since the assumed, speculative facts may change, any judgment rendered in this case would not prevent future lawsuits based on the actual facts that occurred. Additionally, or in the alternative, PPOA requests this Court to dismiss Plaintiffs’ claims because any judgment in this case will not terminate the uncertainty or controversy giving rise to this proceeding.

WHEREFORE, PECAN PLANTATION OWNERS ASSOCIATION, INC. respectfully asks this Court, upon properly noticed hearing, to grant this Motion to Dismiss for Lack of Jurisdiction as to all, or alternatively one or more of Plaintiffs’ causes of action in this suit, and grant the PPOA any and all further relief to which it may be justly entitled.

Respectfully Submitted;

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: 

FRANK SOMMERVILLE

State Bar No. 18842700

CORY HALLIBURTON

State Bar No. 24041847

3030 Matlock Rd., Suite 201

Arlington, TX 76015

(817) 795-5046

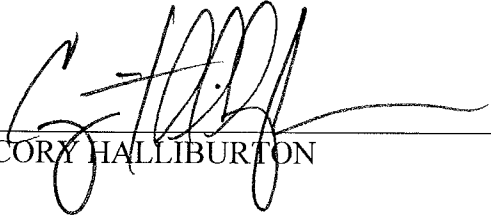
(866) 248-4297 (fax)

ATTORNEYS FOR DEFENDANT PECAN  
PLANTATION OWNERS ASSOCIATION, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded via certified mail return receipt requested, on this the 3<sup>rd</sup> of June, 2008, to:

Christopher Weber  
William Crist  
Christopher J. Weber, L.L.C.  
The Colonnade I  
9901 West IH-10, Suite 165  
San Antonio, Texas 78230-2252

  
CORY HALLIBURTON



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UNINCORPORATED ASSOCIATION  
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VS.

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IN THE DISTRICT COURT

355<sup>TH</sup> JUDICIAL DISTRICT

HOOD COUNTY, TEXAS

AFFIDAVIT OF MICHAEL BARTHOLOMEW

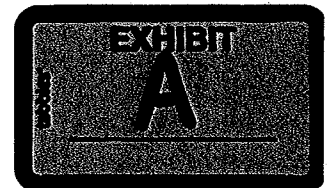
STATE OF TEXAS

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COUNTY OF HOOD

BEFORE ME, the undersigned authority, on this day personally appeared MICHAEL BARTHOLOMEW, who, after being by me duly sworn, upon his oath did state the following:

1. "My name is MICHAEL BARTHOLOMEW. I am over the age of 18 years and fully competent to testify to the matter stated in this affidavit. I have personal knowledge of the facts and statements contained in this affidavit and each of them are true and correct.
2. "I am the general manager for PECAN PLANTATION OWNERS ASSOCIATION, INC. ("PPOA") and am responsible for the day to day operations of the PPOA.
3. "Attached hereto as Exhibit A-1 are correct copies of the Declarations, Covenants and Restrictions that form the basis of Plaintiffs' claims in their pleadings in this lawsuit and which are attached to or referenced in Plaintiffs' Third-Amended Petition filed in this lawsuit.
4. "Attached hereto as Exhibit A-2 are correct copies of excerpts of the Bylaws of PPOA, being Article 13 Sections 1 & 3 and Article 5 Section 5, which set forth the Board of Directors' authority to assess fines for member violations of Restrictive Covenants.
5. "Attached hereto as Exhibit A-3 are correct copies of excerpts of the Rules and Regulations of PPOA, being Sections 12.1 through 13.18, which set forth the various penalties and appeal procedures with respect to member violations of Restrictive Covenants.

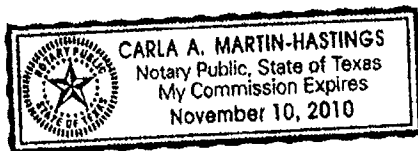


6. "Exhibits A-2 and A-3 are records of PPOA. These records are kept by PPOA in the regular course of business, and it was the regular course of business of PPOA for an employee or representative of PPOA, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and Exhibit A-2 and A-3 were made at or near the time or reasonably soon thereafter. These Exhibits are exact duplicates of the original, and are incorporated herein by reference as if set out in full for all purposes.
7. "To date and as of the time Plaintiffs filed their lawsuit in this cause, PPOA has not and had not, by any official action, cited or fined any of the Plaintiffs for any violations of the Restrictive Covenants relevant to this lawsuit.
8. "No findings have been made by PPOA with respect to Plaintiffs' storage of "RVs, golf carts, trailers, boats and other such vehicles" as alleged by Plaintiffs in their pleadings. No citations have been issued, no fines have been assessed. No explanation of non-compliance has been requested by PPOA or provided by Plaintiffs. No appeal processes have been instituted or adjudicated with respect to Plaintiffs and their respective storage of recreational vehicles, golf cars, trailers, boats and other such vehicles as alleged by Plaintiffs in their pleadings.
9. "Moreover, no Plaintiff has submitted any application for site or building plan approvals for which PPOA has not approved or denied in accordance with the Bylaws of PPOA.

"Further affiant sayeth not."

  
MICHAEL BARTHOLOMEW

SUBSCRIBED and SWORN TO BEFORE ME by MICHAEL BARTHOLOMEW on the 2<sup>nd</sup> day of June, 2008.



  
NOTARY PUBLIC, STATE OF TEXAS

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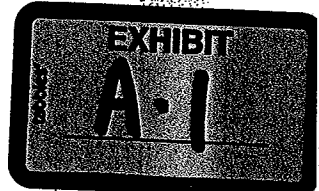
THE STATE OF TEXAS |  
COUNTY OF HOOD | KNOW ALL MEN BY THESE PRESENTS:

That REPUBLIC LAND COMPANY, a Texas corporation, d/b/a PECAN PLANTATION (hereinafter referred to as Dedicator) is the owner of certain land in Hood and Johnson Counties, Texas, and described in Exhibit A attached hereto, a map or plat of which is also attached hereto as Exhibit B, which plat (being in two parts marked Map "A" and Map "B") is adopted by Dedicator as its plan for subdividing said land into lots and blocks as shown thereon, the same to be known as "PECAN PLANTATION, UNIT I," an Addition in Hood County, Texas.

WHEREAS, Dedicator desires to subdivide and plat said real property and other land in and near UNIT I of PECAN PLANTATION in installments, from time to time, so as to develop the same in an orderly manner with areas for single family residences, areas for condominiums, areas for apartments, areas for commercial development, areas for marinas, and areas for recreational uses, with their allied facilities; and

WHEREAS, Dedicator desires to create and carry out an orderly plan for development, improvement and use of all the lots in PECAN PLANTATION, UNIT I, so as to provide for the preservation of the values and amenities in said development and the maintenance of the facilities thereof for the benefit of the present and future owners of said lots:

NOW, THEREFORE, REPUBLIC LAND COMPANY, d/b/a PECAN PLANTATION, declares that the above described property designated as PECAN PLANTATION, UNIT I, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.



## I. DEFINITIONS

As used herein the following terms shall have the meanings indicated:

A. "Dedicator" shall mean, and where appropriate shall include the successors and assigns, of REPUBLIC LAND COMPANY, d/b/a PECAN PLANTATION.

B. "The property" shall mean the real property described in Exhibit A attached hereto.

C. "Lot" shall mean a single piece or parcel of land shown as a numbered lot on the plat attached as Exhibit B. The term shall not include any area or tract designated as a recreational facility or as a private way or any area shown as "undeveloped".

D. "Corner lot" shall mean a lot which abuts on more than one private way or street.

E. "Outbuilding" shall mean any building improvement which is located on a lot but not connected to the residence.

F. "Owner" shall mean the beneficial owner of any lot and shall not include the mortgagee of any such lot unless and until such mortgagee acquires title to same pursuant to foreclosure or any proceeding in lieu of foreclosure.

G. "Association" shall mean the PECAN PLANTATION OWNERS ASSOCIATION, INC., a non-profit corporation organized for the purposes stated in paragraph III C 5 below, and shall include the successors and assigns of such corporation.

## II. EASEMENTS

A. Easements designated on the plat as "private ways" shall provide Dedicator, its successors and assigns and the owners of the lots with the right of ingress and egress to the area and facilities thereof and to adjoining lands and are reserved as private ways, and no right of the public generally shall accrue in and to any of such ways. Dedicator reserves to itself the right to convey said easements or rights therein to the

Association, to be retained by said Association for the benefit of the properties or, in the discretion of the Association, to be dedicated to the public as public ways and easements.

B. Easements designated as "private river and lake access easements" are reserved for the exclusive use of the designated lots adjoining such easements to provide ingress and egress to the Brazos River.

C. Dedicator reserves to itself an easement and right to construct and maintain in, over and across the easements and private ways shown on said plat, utilities of every kind, including but not limited to sewers, water mains, gas mains, irrigation systems, power and communication lines and all pipes, lines and other appurtenances in connection therewith. An easement 10 feet in width is hereby reserved along the front and an easement of 5 feet in width is hereby reserved along each side and back boundary line of each lot as may be necessary for the installation and maintenance of said utilities and lines, except as to river front lots and no utility easement is reserved along the property line adjacent to the river.

### III. RESTRICTIONS, COVENANTS AND RESERVATIONS

#### A. USE OF LAND.

1. Residential use only. No lot shall be used for other than residential purposes and no building shall be erected, altered, or permitted to remain on any lot other than one detached single family dwelling with a private garage, appropriate outbuildings approved under paragraph B 1 below, boat houses, and servant's house for use of bona fide servants. No soil or trees shall be removed for any commercial use. No trees with a diameter exceeding 2" shall be cut from any lot without the prior written consent of Dedicator.

2. Temporary Structures. No structure of a temporary character, trailer, mobile or movable home, basement, tent, shack, garage, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

3. Storage. No lot shall be used for temporary or permanent storage of equipment, material or vehicles except such as may be used in direct connection with the use or enjoyment of any lot as residential property. No tank for the storage of any fluid or gas may be constructed or maintained on any lot above the surface thereof.

4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, boarded or kept on any lot, excepting (a) dogs, cats or other household pets not kept for commercial purposes, and (b) horses kept on lots as agreed upon subsequent hereto by Dedicator.

5. Firearms. Use of firearms on any part of the property is prohibited except in areas that may be designated for such purpose by the Dedicator.

6. Nuisances. No noxious, offensive, dangerous or noisy activity shall be conducted on any lot, nor shall anything be done thereon which may be or become a nuisance to the neighborhood in which said lot is located. Lots shall be kept clean and free of trash, garbage, and debris, and fires shall be contained in a safe enclosure.

7. Towers and Wires. No radio or television towers or aerial wires over 30 feet shall be maintained over any part of any lot not occupied by a structure.

8. Drilling and excavation. No oil drilling, development, refining, quarrying or mining operation shall be permitted upon or in any lot. No sand, gravel or earth shall at any time be excavated or dug out of any lot, except for the purpose of laying the foundation of a residence thereon, erecting such residence, improving the gardens or grounds thereof, or as permitted in paragraph B 13 of this Article with reference to docks and boathouses. No lot abutting on the Brazos River shall be increased in size by filling in the water it abuts.

9. Water Wells. No water wells shall be drilled upon any lot so long as water for domestic use shall otherwise be available to the owners of said lots, but nothing herein shall be construed to prohibit Dedicator or its

assignee or nominee from drilling and equipping a well or wells on any property located in or near the subdivision for the purpose of supplying water to the owners of any lots.

10. Advertising Signs. All advertising signs are prohibited without written consent of the Dedicator.

**B. CONSTRUCTION OF IMPROVEMENTS**

1. Approval of plans. No building, fence or structure of any kind shall be erected or altered on any lot until the plans therefor, including suitability of materials and design, specifications, plot-plan, and compatibility with surrounding lots have been approved in writing by Dedicator, which right of approval may be transferred to an architectural committee of the Association. In the event of disapproval of any such plans, specifications, materials, designs or plot-plans, notice of such disapproval shall be by delivery in person or by registered or certified letter addressed to the party submitting the same at an address which must be supplied with the submission. Any such notice may set forth the elements disapproved and the reason therefor, but need not contain suggestions as to methods to cure any matters disapproved. The judgment of Dedicator or its assigns in this respect and the exercise of its discretion shall be final and conclusive. If notice of disapproval of said plans, specifications, materials or plot-plans is not given within 30 days after same have been submitted, it will be presumed that same have been approved.

2. Floor area. There shall not be erected or permitted to remain on any lot a residence having a floor area (when measured to exterior walls and exclusive of attached garage, open porches, patios or other similar appendages) of less than the minimum number of square feet as set out for the respective lots as follows:

<u>Lot</u>	<u>Minimum Square Feet</u>
25 and 26; 31 thru 64, inclusive; 72 thru 81, inclusive; 86 thru 91, inclusive; 96; 118 thru 129, inclusive; 134 thru 145, inclusive; 150 thru 161, inclusive; and 164 thru 241, inclusive	1,200
1 thru 24, inclusive; 27 thru 39, inclusive; 65 thru 71, inclusive; 82 thru 85, inclusive; 92 thru 95, inclusive; 97 thru 117, inclusive; 130 thru 133, inclusive; 146 thru 149, inclusive; 162 and 163; and 242 thru 258, inclusive	1,600

3. Exterior walls. At least 50% of the exterior wall surface of any residence shall be constructed of stone, masonry veneer, stucco, or glass building materials commonly used, unless written exception to such requirement is given by Dedicator or its architectural committee.

4. Building lines. No building, fence or structure of any kind shall be located on any lot within 25 feet of the front lot line except lots facing a cul-de-sac, where the set back line is reduced to 15 feet and except upon prior approval of the Dedicator. For the purpose of this restriction, eaves, steps and open porches shall be considered as part of a building. Lots shall "front" on the adjoining private way; corner lots shall be deemed to "front" on the private way adjoining the shortest lot line. No part of any structure shall be erected or maintained closer than seven feet to any side lot line. No part of any structure shall be erected or maintained on any portion of any river front lot without the prior approval of Dedicator as to the location of said structure.

5. Garages. Every garage shall be an enclosed structure attached to the residence or to a breezeway or covered porch attached to the residence. Every garage shall have the capacity to contain at least two automobiles. No garage shall face any street or private way except upon prior written approval of the Dedicator.

6. Outbuildings. Outbuildings shall be of design and construction compatible with that of the residence. No outbuilding shall exceed the residence in height, except upon prior approval of the Dedicator. Cooling towers and all other mechanical units must be located at the side or rear of the residence and must be screened to the satisfaction of the Dedicator.

7. Structures on easements. No structure, planting or other material shall be placed or permitted to remain within the easements referred to in Article II C which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which Dedicator, a public authority, or utility company is responsible.



8. Sidewalks. No sidewalks shall be permitted in the parkway parallel with private ways, but this provision does not exclude sidewalks or driveways from private ways or streets to the buildings.

9. Mail boxes. The location, size and design of all mail boxes shall be subject to the prior approval of Dedicator.

10. Time for Construction. All exterior improvements shall be completed within six months from the beginning of construction, unless prevented by war, strikes or acts of God. Any outbuilding shall be constructed at the same time or subsequent to the construction of the residence it is intended to serve.

11. Sewage Facilities. All lavatories, toilets and bath facilities shall be installed indoors and, where sewer service is not made available by Dedicator, shall be connected with adequate grease traps, septic tanks and lateral lines constructed to comply with the specifications of any governmental authorities having jurisdiction, and no outside or surface toilets shall be permitted under any circumstances. Owners of lots to which Dedicator makes sewer service available shall be required to connect to, use and pay for same. All lavatories, toilets and bath facilities shall be completely installed and functioning before the residence is occupied.

12. Irrigation. An irrigation system for the irrigation of pecan trees has been installed by Dedicator on some lots. Upon purchasing any such lot, the purchaser will be required to elect either (a) to waive the use of the irrigation system on the lot, in which event the irrigation system will be removed from the lot or capped at Dedicator's election, or (b) to use and maintain the irrigation system on the lot, in which event Dedicator shall have the right to irrigate the trees on such lot at Dedicator's convenience and without notice to the owner, with the owner having the right to install a valve permitting the irrigation system to the lot to be turned on and off, at the owner's expense and in compliance with the Dedicator's reasonable requirements, during periods when said irrigation system is being used by Dedicator in a location coinciding with owner's lot.

13. Water and Sewerage. Owners of lots abutting on the Brazos

River shall not construct or permit the construction of any improvement, including but not limited to docks and boathouses, which extends beyond the rear lot line into the river channel. Owners of such lots may, however, with the prior approval of the Dedicator, (a) construct within the lot lines of each such lot a dock or boathousing facility in the form of a cut-out or dug-out with seawall, and (b) deepen the river channel adjacent to such lot by dredging. All work performed under the authority of the preceding sentence shall comply with any rules or regulations of any governmental authority.

14. Pollution. No lot abutting on the Brazos River shall be used for any purpose that would result in pollution of the river by refuse, sewage, or other material that might tend to pollute the river or otherwise impair the ecological balance of surrounding lands.

#### C. GENERAL

1. Subdivision of lots. No lot shall be subdivided without prior approval of the Dedicator; provided, however, that Dedicator expressly reserves the right to subdivide any lot to which it shall hold title.

2. Pumping from river. The pumping of water from the Brazos River is prohibited except by special permit, in writing, granted by any governmental authority.

3. Recreational facilities. Dedicator covenants that it will construct and complete the following recreational facilities: 18 hole golf course, clubhouse, swimming pool, marina with boat launching ramp, tennis courts, skeet range, equestrian center, landing strip, and beach recreational areas.

4. Disposition of lot. No sale, transfer, lease or other disposition of any lot shall be consummated unless and until the purchaser or transferee has applied for and has been accepted as a member of the Association. In the event of a disposition or attempted disposition in violation of the preceding sentence, Dedicator shall have the absolute right and option to acquire said lot (or the interest disposed of or proposed to be disposed of)

at the same price and on the same terms as were offered to the purchaser or transferee. This restriction shall not apply, however, to lenders who may bid said property in at any foreclosure sale brought by them without regard to such membership restriction, or to a transfer of such property pursuant to a duly probated will or by virtue of intestacy; but as to any such excepted disposition Dedicator shall have an absolute right and option to purchase said lot from any such transferee or transferees in the event they shall decide to sell, transfer, or otherwise dispose of the same, at the same price and on the same terms of any good faith offer to purchase acceptable to such transferee.

5. Membership in Association. Upon the approval of a purchaser's application for membership in the Association and the execution of a sales contract or the acceptance of a deed, each purchaser of a lot (whether from Dedicator or a subsequent owner) shall become a member of the Association, a non-profit corporation organized for the purpose of providing its members with a clubhouse and private recreational facilities and of establishing and maintaining private ways, security protection and other services for the common benefit of all lot owners. Said membership shall be conditioned upon observance of the rules and regulations established by the Association for the benefit and general welfare of its members and for the official operation thereof. Said membership shall also be conditioned upon payment, when due, of such dues, fees, and charges as the Association shall find necessary for the maintenance of the aforesaid facilities and services and any other services and benefits which the Association may provide for the benefit of the lots, facilities, and members.

6. Lien for amounts owed to Association. By the acceptance and retention of title to any lot each owner, his heirs and assigns, who is or becomes a member of the Association covenants and agrees that the Association shall have a lien upon the subject lot or lots (second only to liens for taxes and any duly recorded mortgage) to secure the payment of the aforementioned dues, fees, and charges, including court costs and reasonable attorney's fees incurred in connection with the collection of the same. This

covenant and agreement shall be in addition to and shall not be affected by any contract, security agreement, or application which such owners, their heirs or assigns, may enter into with the Association.

7. Non-members of Association. If, notwithstanding the requirement of membership in the Association as a condition to the purchase of a lot, title to any lot shall be acquired by a party who has not been approved for membership in the Association, or if any owner shall be approved for membership but later cease to be a member of the Association, then, nevertheless, said owner, by acceptance and retention of title to a lot, covenants and agrees that he will bear and pay such portion of the specific expenses required and expended by the Association, its successors and assigns, solely for the maintenance of the facilities and services for which he would be required to pay if he were then in fact a member of such Association and as determined by the accountant for such Association. Further, each owner, on behalf of himself, his heirs and assigns, does hereby covenant and agree that the Association shall have a lien upon the subject lot or lots (second only to liens for taxes and any duly recorded mortgage) to secure the payment of the aforementioned expenses, including court costs and reasonable attorney's fees incurred in connection with the collection of the same. Unimproved lots owned by Dedicator or by a corporation or other entity with substantially the same ownership and control as Dedicator shall not be subject to such assessment.

8. Assessments. Beginning <sup>upon</sup> completion of Clubhouse and opening of the Golf Course each purchaser of a lot from Dedicator, and the successors and assigns of said purchaser, shall be assessed the sum of \$15.00 per month payable to the Association for the maintenance and operations of the Association's services and facilities, and Dedicator shall pay all other sums incurred by the Association for the construction, development, and operation of its facilities and services. Such assessments shall continue until such time as Dedicator, if it elects to do so in its discretion, has transferred the voting rights in the stock to the membership at large of the Association; thereafter,

such assessment shall be determined by the Association in accordance with its By-Laws. Neither Dedicator nor any corporation or other entity with substantially the same ownership and control as Dedicator shall ever be assessed by the Association for any unimproved lot owned by it or transferred to a corporation or other entity with substantially the same ownership and control.

9. Golf Course Lots. The owners of lots abutting on the golf course shall permit the doing of every act necessary and proper to the playing of golf on the golf course, including but not limited to the recovery of golf balls from such lots, the use of necessary and usual equipment upon such golf course, the usual and common noise level created by the playing of the game of golf, together with all the other common and usual activity associated with the game of golf and with all the normal and usual activities associated with the operation of a country club maintaining a golf course.

10. Pecan operations. At the time of this dedication an entity related to dedicator with substantially the same ownership as Dedicator operates property adjoining some of the lots which it intends to use for the purposes of planting, growing, and cultivating pecan trees and gathering pecans therefrom for commercial sale (hereinafter called "pecan operations"). Dedicator reserves to itself, all entities with substantially the same ownership as dedicator, and all owners or lessees or operators of said pecan operations, the right to do any acts and use any machinery and equipment reasonably necessary or desirable in connection with the pecan operations, including but not limited to plowing, planting, aerial and ground spraying, irrigation, fertilization, cultivation and gathering. By acceptance and retention of title to a lot in PECAN PLANTATION, each owner agrees on behalf of himself and his heirs, assigns, guests and invitees that Dedicator, all entities with substantially the same ownership as dedicator, and all owners or lessees or operators of said pecan operations, shall not be liable for any damage or injury resulting directly or indirectly from such pecan operations unless said damage or injury is caused by the conducting of such operations in an imprudent and negligent manner. Dedicator further intends and reserves to itself, all entities with substantially the same ownership as dedicator, and all lessees or operators of said pecan operations, or any other owner of said pecan orchard adjoining some of the lots, the right to construct and maintain

fences separating the land to be used for pecan operations from the lots, private ways, and recreational facilities. By acceptance and retention of title to a lot in PECAN PLANTATION, each owner agrees that he, his family and guests, shall observe and respect such fences and refrain from crossing same and shall respect the privacy of the land on which pecan operations are conducted.

11. Unsold lots. Notwithstanding anything to the contrary herein, Dedicator reserves for itself and its designated agent or agents the right to use any unsold lot or lots for a temporary office location and the right to place a sign or signs on any unsold lot or lots.

12. Interpretation. In the event of any dispute over the proper interpretation of any of the provisions of this dedication, the determination of the Dedicator shall be final and binding on all interested persons.

13. Severability. All of the restrictions, covenants, and reservations appearing herein shall be construed together, but if any one or more of the same shall be held to be invalid or for any reason are not or cannot be enforced, none of the other restrictions, covenants and reservations shall be affected or impaired thereby but shall remain in full force and effect.

14. Enforcement. These restrictions, covenants, and conditions may be enforced by Dedicator herein or by the owner of any lot in PECAN PLANTATION, UNIT I, either by proceedings for injunction or to recover damages for breach thereof, or both. However, only the Association may file suit to collect any of the charges, dues and expenses mentioned in paragraphs 5, 6, 7 and 8 above, all of which shall be payable to the Association in Hood and Johnson Counties, Texas, or to enforce foreclosure of any lien therein granted.

15. Duration. All of the restrictions and covenants herein set forth shall continue and be binding upon the Dedicator, its successors and assigns, and all parties claiming by, through or under the Dedicator until January 1, 1997, at which time all restrictions and covenants herein set forth

shall be automatically extended from such date for successive periods of ten years each; provided that at any time after January 1, 1997 the owners of the beneficial title of a majority of the lots herein dedicated may, by written instrument duly executed, acknowledged and recorded in the Deed Records of Hood and Johnson Counties, Texas release any lot or lots from any one or more of the restrictions and covenants herein set forth or agree to a change in said restrictions and covenants in whole or in part, except that no such change shall affect or impair the rights and privileges retained by Dedicator with respect to any other land owned by Dedicator or change or modify any covenant or agreement of any lot owner with respect to any such land.

16. Additional Subdivisions. As recited in the preamble to this instrument, Dedicator intends to subdivide and plat other land in or near PECAN PLANTATION, UNIT I from time to time so as to develop same as a part of PECAN PLANTATION. Developer therefore reserves the right to add to PECAN PLANTATION from time to time other land in and near PECAN PLANTATION, UNIT I; to place on such additional subdivided land such restrictions and covenants as to use, improvements and otherwise as Developer shall deem advisable, whether more or less stringent than those provided herein; to extend the private ways shown on Exhibit B attached hereto so as to serve such additional subdivided land; to use the easements reserved herein to serve such additional subdivided land; and to grant to the purchasers of such additional subdivided land the right to become members of the Association and to use the recreational facilities and private ways provided for herein. It is specifically understood that Developer may develop some additional land for single family residences, some for apartments, some for condominiums, and some for commercial uses and may at its election create and install additional recreational facilities. Unless otherwise provided in the instrument creating any future subdivision of PECAN PLANTATION, all purchasers of lots in PECAN PLANTATION, UNIT I, and all purchasers of lots in such

additional subdivisions shall be entitled equally to the use of all private ways and recreational facilities provided for in all such subdivisions, to enforce any restriction, covenant or condition provided for therein, to participate in any modification or change in said restrictions, covenants, and conditions under paragraph 15 above, and to become members of the Association, just as though all of said subdivisions had been created at one time and by one instrument.

17. Dedicator shall have the right to grant to one or more corporations, partnerships or other entities the right to use the easements herein reserved for any of the purposes or uses for which such easements are designated; to grant and convey to its successors or assigns ( or, at its election, to assign to the Association) the discretions, approval rights, and enforcement rights retained by Developer with respect to any of the lots; and to grant to its successors or assigns the benefit of all provisions hereof which relate to any other land now owned by Dedicator.

18. All of the covenants and agreements undertaken or assumed by purchasers or owners of lots hereunder, and all of the restrictions, covenants, liens and reservations imposed upon any of the lots hereunder, shall run with said lots and each of them and shall be binding on each purchaser from Dedicator and on such purchaser's heirs, administrators, executors and assigns.

Executed this 26th day of July, 1972.

REPUBLIC LAND COMPANY, d/b/a  
PECAN PLANTATION

ATTEST:

Phyllis Patras  
Phyllis Patras, Asst. Secretary

By Obie P. Leonard, Jr.  
Obie P. Leonard, Jr.,  
Vice-President



THE STATE OF TEXAS  
COUNTY OF TARRANT

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared OBIE P. LEONARD, JR., Vice-President of REPUBLIC LAND COMPANY, d/b/a PECAN PLANTATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said REPUBLIC LAND COMPANY, d/b/a PECAN PLANTATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 26th day of July, A. D. 1972.

*Betty June Lewis*  
Notary Public, Tarrant County, Texas

BETTY JUNE LEWIS, Notary Public  
Tarrant County Texas

EXHIBIT "A"

Field Notes describing PECAN PLANTATION, Unit I, out of the JAMES W. MOORE SURVEY, Abstract No. 344, Hood County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a steel rod for the Southwest corner of Lot 168 of the property to be described herein, said point being North 77 degrees 35 minutes East 5182-0/10 feet from the most Southerly Southeast corner of that certain 221 acre tract conveyed to The Brazos River Authority, also known as Tract Number 100 as surveyed by Robert C. Wiese, May 1966;

THENCE North 11 degrees 03 minutes East 368-8/10 feet to a steel rod;

THENCE South 78 degrees 57 minutes East 100-0/10 feet to a steel rod;

THENCE North 39 degrees 03 minutes East 161-7/10 feet to a steel rod on a curve, said curve having a radius of 497-87/100 feet;

THENCE along the arc of said curve, to the left and in a Northwesterly direction, 85-23/100 feet to a point;

THENCE North 25 degrees 46 minutes East 50-0/10 feet to a steel rod;

THENCE North 27 degrees 14 minutes East 103-7/10 feet to a steel rod;

THENCE North 3 degrees 20 minutes West approximately 283 feet to a point on the bank and property line of the Brazos River;

THENCE along said river bank and property line, in a North-easterly direction with its' meanders, approximately 8360 feet to a steel rod;

THENCE departing said river bank and property line, South 10 degrees 26 minutes East approximately 672 feet to a steel rod;

THENCE South 0 degrees 04 minutes West 155-0/10 feet to a steel rod;

THENCE South 4 degrees 04 minutes East 50-0/10 feet to a point on a curve;

THENCE along the arc of said curve having a radius of 481-64/100 feet, to the right and in a Northeasterly direction, 66-63/100 feet to a steel rod;

THENCE South 7 degrees 13 minutes West 173-5/10 feet to a steel rod;

THENCE South 66 degrees 49 minutes West 135-0/10 feet to a steel rod on a curve;

THENCE along the arc of said curve, having a radius of 432-23/100, to the right and in a Southeasterly direction, 68-35/100 feet to a point;

THENCE South 76 degrees 38 minutes West 50-0/10 feet to a steel rod;

THENCE South 79 degrees 40 minutes West 146-5/10 feet to a steel rod;

THENCE North 72 degrees 11 minutes West 215-0/10 feet to a steel rod;

THENCE South 62 degrees 19 minutes West 383-5/10 feet to a steel rod;

THENCE South 59 degrees 50 minutes West 391-0/10 feet to a steel rod;

THENCE South 54 degrees 53 minutes West 700-0/10 feet to a steel rod;

THENCE South 17 degrees 34 minutes West 141-85/100 feet to a steel rod;

THENCE South 14 degrees 37 minutes West 1195-0/10 feet to a steel rod;

THENCE South 9 degrees 04 minutes West 357-6/10 feet to a steel rod;

THENCE South 89 degrees 00 minutes West 1067-0/10 feet to a steel rod;

THENCE South 80 degrees 22 minutes West 262-7/10 feet to a steel rod;

THENCE North 84 degrees 35 minutes West 385-3/10 feet to a steel rod;

THENCE South 70 degrees 30 minutes West 48-5/10 feet to a steel rod;

THENCE South 43 degrees 38 minutes West 176-8/10 feet to a steel rod;

THENCE South 47 degrees 26 minutes West 505-9/10 feet to a steel rod;

THENCE South 68 degrees 11 minutes West 317-1/10 feet to a steel rod;

THENCE South 60 degrees 22 minutes West 101-4/10 feet to a steel rod;

THENCE South 53 degrees 47 minutes West 471-0/10 feet to a steel rod;

THENCE South 24 degrees 08 minutes West 61-7/10 feet to a steel rod;

THENCE South 4 degrees 11 minutes East 787-57/100 feet to a steel rod;

THENCE South 79 degrees 49 minutes West 1491-6/10 feet to a steel rod;

THENCE South 80 degrees 04 minutes West 463-0/10 feet to the place of beginning.

execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 2. Checks, Drafts, etc.** All checks, drafts and orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice-president of the Association.

**Section 3. Deposits.** All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select and designate by appropriate resolution.

**Section 4. Gifts.** The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Corporation.

## ARTICLE ELEVEN

### BOOKS AND RECORDS

The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors and Committees having any of the authority of the Board of Directors and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the Corporation may be inspected by any member eligible to vote, or his agent or attorney, for any proper purpose during normal office hours.

## ARTICLE TWELVE

### FISCAL YEAR

The fiscal year for the Corporation shall begin on the first day of November and end on the last day of October of the following year.

## ARTICLE THIRTEEN

### ASSESSMENTS

**Section 1. Corporation to make Assessments.** By virtue of the authority delegated to it and subject to the provisions of the Declarations of Restrictions, heretofore described in Article Three of these By-laws, the Board of Directors of the Corporation may fix, levy and collect assessment or charges.

**Section 2. Parts of Property Not Assessed.** There shall be no assessment whatsoever against any Unplatted Parts of the property, nor against property owned by Republic Land Company d/b/a Pecan Plantation (whether or not such property has ever been sold to a third party and later reacquired), or any corporation or other entity with substantially the same ownership and control as Republic Land Company, nor against property owned by the stockholders of Republic Land Company or successor entity where such ownership results from a complete or partial liquidation of such corporation and distribution of assets to its stockholders. Further, there shall be no assessment against any property owned by a "wholesale purchaser for resale", except as herein provided.

A "wholesale purchase for resale", is a purchaser who acquires from Developer, in a single transaction at least ten of the lots then owned by Developer, where such lots are acquired for the purpose of resale to the



general public or the builders. The lots initially purchased by a "wholesale purchaser for resale", and all lots subsequently acquired from Developer by such purchaser shall be deemed "wholesale lots" until resold, and no assessment by the Association shall be levied or collected with respect to "wholesale lots" except as follows:

- (a) The owner of "wholesale lots" shall be required, so long as one or more "wholesale lots" are owned, to pay one assessment (the assessment levied with respect to other lots in the subdivision), which shall entitle such owner to designate one individual to use the Association facilities as a member.
- (b) Each "wholesale lots" on an individual lot basis shall be liable for the regular assessment then in effect beginning with the nineteenth (19<sup>th</sup>) month after such lots became a "wholesale lot". That is, the status of a lot as a "wholesale lot" shall terminate after a lot has occupied such status for eighteen (18) months.
- (c) The owner of: wholesale lots: shall be entitled to only one vote per assessed lot under Article 5, Section 3 of the Bylaws. During the period the wholesale owner pays only one assessment of all wholesale lots owned by that owner, the owner shall be entitled to only one vote. However, the owner shall have one vote per each lot as the lots "wholesale lot" status terminates and the owner begins paying an assessment for that lot. **As Amended March 2, 2002**

**Section 3. Purpose of Assessments.** The assessments levied by the Corporation shall be used for the purpose of the improvement, maintenance, management, and administration of the Association Property and Common facilities, including, but not limited to, the payment of taxes and insurance thereon and repair replacement and additions thereto, and for the expenses of administering and enforcing the Declarations of Restrictions heretofore mentioned in Article Three thereof, and for carrying out the purposes of the Corporation as stated in its Articles of Incorporation as amended.

**Section 4. Basis and Maximum of Annual Assessments.** The maximum annual assessment may be modified by a two-third (2/3) vote of a quorum present and voting at a meeting of the members of the Association. The Board of Directors of the Association may, after considering the current maintenance costs of the Association Property and Common Facilities and future needs of the Association fix the actual assessment for any year at a lesser amount, or the Board of Directors of the Association may fix no assessment whatsoever for any year, depending upon the needs of the Association. This section governs the maximum amount to be fixed as actual assessments, but in no way limits the authority of the Board of Directors of the Association to fix a lesser amount or no assessment whatsoever for any year. No proposal to modify the maximum assessment may be considered at a membership meeting unless the notice of such meeting given to the members includes a notification that the matter of modification of the maximum assessment will or may be considered at such meeting. Subject to the special provisions (where and when applicable) concerning payment of assessments contained in the recorded Restrictions and Covenants, the owner of an apartment lot shall be responsible for the payment of one basic assessment for each apartment located on the lot regardless of rental or occupancy status. A condominium unit shall be assessed on the same basis as a single-family residence lot, in accordance with the Restrictions and Covenants of Pecan Plantation subdivision. **As Amended Dec 11, 1999**

**Section 5. Date of Commencement of Annual Assessments, Due Dates.** The assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Board of Directors of the Corporation to be the date of commencement. The assessments shall be payable monthly in advance. The Boards of Directors may permit payment in advance annually, semi-annual or quarterly with or without discount for such advance payment.

**Section 6. Duties of Board of Directors.** The Board of Directors of the Corporation shall fix the date of commencement and the amount of the assessment (within the allowable maximum) if any is so fixed, at least thirty (30) days in advance of such commencement date and shall, at that time prepare a roster of the

properties and assessments applicable thereto which shall be kept in the office of the Corporation and shall be open to inspection by any member. Written notice of any change in assessment shall be sent to every member or owner subject thereto. The Corporation shall upon demand at any time furnish to any member liable for said assessment or to any first mortgage holder of any properties liable for said assessment a certificate in writing signed by an officer or authorized agent of the Corporation, 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.

**Section 7. Effect of Non-payment of Assessment; the personal obligation of the Owner, the Lien, remedies of the Corporation.** If an assessment or other charge is not paid on the date when due, then such assessment or charge shall be delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, thereupon constitute a continuing lien upon the property assessed which shall encumber and bind such property in the hands of the then owner, his heirs, devisees, person representatives and assigns.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) per cent per annum, and the Corporation may bring action at law against the owner personally obligated to pay the same and to foreclose the lien against the property and there shall be added to the amount of such assessment court costs and reasonable attorney fees incurred in prosecuting such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

**Section 8. Subordination of the Lien to Mortgages.** The lien resulting from any assessment provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust placed upon the property subject to assessment; provided, however, that such ~subordination shall apply only to the assessments which have become due and payable prior to the sale of any such property pursuant to a sale thereof under power of sale in any such deed of trust. Such sale shall not relieve the property from liability for any assessment thereafter becoming due nor from the lien resulting from any such subsequent assessment.

**Section 9. Transfer and Tenant Fees.**

Transfer Fee. When an application for a regular membership is approved it will become effective when payment of six hundred dollars (\$600.00), plus tax, is made to the Association. A member in good standing will not be charged a transfer fee for any additional lots that the member might purchase. Also no transfer fee will be charged if a member transfers a lot to a member's spouse, parents or children. As Amended March 7, 1998

Tenant Fee. When an application for a tenant membership is approved it will become effective when payment of eight hundred dollars (\$800.00), plus tax, is made to the Association. If a tenant becomes a property owner within five (5) months a prorated amount of the tenant fee will be refunded. Tenant membership fees will not be charged to a member in good standing as long as the member holds title to a lot. If said lot is sold while the member is renting elsewhere at Pecan Plantation, he/she must purchase a lot within six (6) months or a tenant membership fee will be charged. As Amended March 7, 1998

**ARTICLE FOURTEEN**

**PURCHASE OF STOCK IN COUNTRY CLUB**

The Association shall own all of the issued shares of stock in the Country Club, and in return therefore, the Association shall grant, sell and convey to the Country Club all property hereinbefore defined as "recreational area". The Association is authorized to make capital contributions to the Country Club at such times as the Board of Directors of the Association deems necessary, upon the approval of the Board

## SECTION 12: PENALTIES

### 12.1 GENERAL VIOLATIONS

- 12.1.1** Non-flagrant first offenses shall result in the issuance of a warning unless a specific fine is specified in these Rules and Regulations for the violation.
- 12.1.2** Repeat violations, which are not considered to be flagrant, shall result in a fine of twenty-five dollars (\$25.00).
- 12.1.3** If three (3) non-flagrant warnings, restrictions, or fines occur for the same rule violation within a two (2) year period then an additional fine of one hundred dollars (\$100.00) shall be imposed.
- 12.1.4** The accumulation of four (4) warnings, restrictions, or fines for rule violations within a two (2) year period is considered to be a flagrant violation. Each additional violation within a two (2) year period is considered a separate flagrant violation.
- 12.1.5** Flagrant violations are defined as being those rule violations where:
- a. There is a just cause to believe that the violation resulted in or could have resulted in, willful bodily injury or property damage and/or leaving the scene of an accident in Pecan Plantation. (As Amended 5/20/99)
  - b. There is willful disregard for a reasonable request by the General Manager or his assigns.
  - c. There has been physical or verbal abuse of PPOA personnel or volunteers.
  - d. There has been an accumulation of warnings, restrictions, or fines for violations of these Rules and Regulations.
- 12.1.6** The penalty for a flagrant violation may include: (a) a fine of up to five hundred dollars (\$500.00), (b) suspension of privileges for up to six (6) months; (c) restriction or denial of driving privileges; or (d) any combination of (a), (b) or (c) deemed appropriate by the Board of Directors.
- 12.1.7** A fine of up to five hundred (\$500.00) or suspension of privileges for up to six (6) months shall be imposed upon a member who uses the Club or recreational facilities while his privileges have been suspended.
- 12.1.8** Members are required to continue paying all PPOA monthly assessments during any period of suspension of privileges.
- 12.1.9** Members are responsible for any fines assessed their guests for violations of PPOA Rules and Regulations.



## 12.2 TRAFFIC VIOLATIONS:

**12.2.1** It is a rules violation to exceed the speed limit within Pecan Plantation. The speed limits within Pecan Plantation shall be enforced by radar. Security Officers are empowered to stop speeding vehicles and issue citations. Speed limits within Pecan Plantation are:

35 MPH on Primary streets and 25 on all other streets unless otherwise posted.

Primary streets are:

Westover, Wedgefield, Monticello, Ravenswood and Bellechase.

Those areas where 35 MPH is not prudent:

Westover curvy section, 25 MPH, also the 15 MPH zones at each gate and the approach to the Marina before the underpass.

**12.2.2** The penalty for speeding violations shall be determined by the speed in excess of the posted limit and by the number of previous speeding violations within a two-year period as follows: (Approved by BOD 5/28/98)

<b>Speed in excess</b>		<b><u>1<sup>st</sup> Violation</u></b>	<b><u>2<sup>nd</sup> Violation</u></b>	<b><u>3<sup>rd</sup> Violation</u></b>
<b><u>of posted limit</u></b>				
1-5	MPH	Warning	\$40	\$85
6-10	MPH	\$40	\$85	\$100
11-15	MPH	\$85	\$100	\$200
16-20	MPH	\$100	\$200	\$250
21 +	MPH	\$150	\$250	\$300

**12.2.3** Failure to obey driving restrictions as assessed by the Board of Directors is considered a flagrant violation.

**12.2.4** Non-Speeding traffic violations, with the exception of reckless driving, shall be enforced by Section 12, General Violations.

**12.2.5** Driving at any speed considered excessive due to location or conditions or in a manner that may cause bodily injury or property damage is considered reckless driving and is a flagrant violation.

**12.2.6** The operation of a motorized vehicle in Pecan Plantation while under the influence of drugs or alcohol is a flagrant violation.

**12.2.7** Drivers must have a valid drivers license on their person while operating a motorized vehicle in Pecan Plantation and are required to present it to a Security Officer upon request. A \$25.00 fine will be imposed for this violation unless that driver presents proof of a valid drivers license at the PPOA Security Office within 72 hours of the citation.



**12.2.8** All motorized vehicles must stop in both directions for a school bus with flashing red lights.

- a. 1<sup>st</sup> violation - \$100.00 fine,
- b. 2<sup>nd</sup> and successive violations – Flagrant violation.

**12.2.9** It is a violation for the operators of any vehicle to allow cargo to spill on streets or private property. A fine of \$100 may be assessed and the driver or owner of the vehicle will be responsible for cleaning or repairing any property damaged.

## SECTION 13: APPEALS

### 13.1 PROCEDURE

13.1.1 Any member or guest may appeal a rule violation citation, fine or restriction.

13.1.2 All citations, fines or restrictions, excluding ACC citations, fines and restrictions, may be appealed to the Safety & Security Committee and the Board of Directors in that order. The appeal to the committee may be in person or in writing at the choice of the appellant. Notice of intent to appeal must be made to the ACC and Security Office within 10 days of the date of the citation, fine or restriction. Committee appeal action must be completed within 45 days of the original citation, fine or restriction. A final appeal to the Board of Directors is available if the appeal to the Committee results in denial of the appeal.

13.1.3 Citations, fines or restrictions issued by the Architectural Control Committee (ACC) Compliance Officer or the ACC and Security Administrator may be appealed in person or in writing at the choice of the appellant to the ACC and to the Board of Directors, in that order. Notice of intend to appeal must be made to the ACC and Security Office within 10 days of the date of the citation, fine or restriction. Committee appeal action must be completed within 45 days of the original citation, fine or restriction. A final appeal to the Board of Directors is available if the appeal to the Committee results in denial of the appeal.

13.1.4 Notification of intent to appeal a Committee finding to the Board of Directors must be made to the General Manager's Office within 10 days after the Committee finding is made known to the individual(s) against whom the citation, fine or restriction was issued. Final Board of Directors appeal action must be completed within 45 days of the date the General Manager's office receives the member's notice of intent to appeal.

13.1.5 Any citation, fine or restriction issued by the Board of Directors or the General Manager may be appealed to the Board of Directors provided that notice of intent to appeal is made known to the General Manager's office within 10 days of the individual(s) receipt of notification of the citation, fine or restriction. Final Board of Directors appeal action must be completed within 45 days of the date the General Manager's office receives the notice of intent to appeal.

13.1.6 Board of Directors judgment on the appeal of any citation, fine or restriction is final.

13.1.7 Formal written notifications to individuals as to Committee or Board of Directors appeals schedules or findings of appeal actions will be made with personal delivery of the schedule or findings to the individual(s) or by registered mail, with return receipt requested.

13.1.8 One 30 day extension to the time restrictions given above may be granted by either the appropriate Committee Chairman or Board of Directors, however, unexcused failure of a person(s) to appear at a scheduled appeal hearing or failure to provide an intended written appeal, will vacate an appeal and terminate the appeal process.

**(As Amended 7-1-04)**