

CURRENT
By LAWS

ASSOCIATION BYLAWS

WALNUT CREEK HOME ASSOCIATION

ARTICLE I DEFINITIONS

1. **Association.** "Association" shall mean and refer to the Walnut Creek Home Association, a Michigan Non-Profit Corporation, its successors and assigns.
2. **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 which is a part of Walnut Creek Subdivision, and any future subdivisions annexed thereto or the land contract purchaser thereof, but excluding those having any interest merely as security for the performance of an obligation.
3. **Lot.** "Lot" shall mean and refer to any numbered lot shown on the recorded plat of Walnut Creek Subdivision, and any future subdivisions annexed thereto.
4. **Grantor.** "Grantor" shall mean and refer to 22 Mile Development Associates, a Michigan Co-Partnership, its successors and assigns.
5. **Declaration.** "Declaration" shall mean and refer to Declaration of Restrictions for Walnut Creek Subdivision, and any future subdivisions annexed thereto, as recorded in Liber 113, pages 46 through 50, Macomb County Records.
6. **Assessment Unit.** "Assessment Unit" shall mean any residential subdivision lot developed within the Walnut Creek Subdivision.
7. **Community Areas.** "Community Areas" shall mean all the real property now or hereafter dedicated and declared by Declarant for the common use and enjoyment of all of the owners of property in Walnut Creek Subdivision. No area shown or indicated on any plan or plat of any portion of the Walnut Creek Subdivision shall be considered as a Community Area unless and until it has been dedicated and declared by Grantor for the common use and enjoyment of the owners in the Walnut Creek Subdivision by a recorded instrument executed by Grantor.

ARTICLE II VOTING

1. **Vote.** Except as limited in these Bylaws, each Owner shall be entitled to one vote for each Lot.

2. **Eligibility to Vote.** No Owner, other than the Grantor, shall be entitled to vote at any meeting of the Association until he has presented evidence of ownership of a Lot in the Subdivision to the Association. Except as provided in Article IV, Section 2 of these Bylaws, no Owner, other than the Grantor, shall be entitled to vote prior to the date of the First Annual Meeting of members held in accordance with Section 2 of Article III. The vote of each Owner may be cast only by the individual representative designated by such Owner in the notice required in Section 3 of this Article II below or by a proxy given by such individual representative. The Grantor shall be the only person entitled to vote at a meeting of the Association until the First Annual Meeting of members and shall be entitled to vote during such period notwithstanding the fact that the Grantor may own no lots at some time or from time to time during such period. At and after the First Annual Meeting the Grantor shall be entitled to vote for each Lot which it owns.
3. **Designation of Voting Representative.** Each Owner shall file a written notice with the Association designating the individual representative who shall vote at meetings of the Association and receive all notices and other communications from the Association on behalf of such Owner. Such notice shall state the name and address of the individual representative designated, the number or numbers of the Lot or Lots owned by the Owner, and the name and address of each person, firm, corporation, partnership, association, trust or other entity who is the Owner. Such notice shall be signed and dated by the Owner. The Owner may change the individual representative designated at any time by filing a new notice in the manner herein provided.
4. **Quorum.** The presence in person or by proxy of 35% of the Owners qualified to vote shall constitute a quorum for holding a meeting of the members of the Association. The written vote of any person furnished at or prior to any duly called meeting at which meeting said person is not otherwise present in person or by proxy shall be counted in determining the presence of a quorum with respect to the question upon which the vote is cast.
5. **Voting.** Votes may be cast only in person or by a writing duly signed by the designated voting representative not present at a given meeting in person or by proxy. Proxies and written votes must be filed with the secretary of the Association at or before the appointed time of each meeting of the members of the Association. Cumulative voting shall not be permitted.
6. **Majority.** A majority shall consist of more than 50% of those qualified to vote and present in person or by proxy (or written vote, if applicable) at a given meeting of the members of the Association.

ARTICLE III MEETINGS

1. **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Owners as may be designated by the Board of Directors. Meetings of the Association shall be conducted in accordance with

Sturgis' Code of Parliamentary Procedure, Roberts Rules of Order or some generally recognized manual of parliamentary procedure, when not otherwise in conflict with the laws of the State of Michigan.

2. **First Annual Meeting.** Only Grantor may convene the First Annual Meeting of members of the Association. Grantor may call meetings of members for informative or other appropriate purposes prior to the First Annual Meeting of members and no such meeting shall be construed as the First Annual Meeting of members. The date, time and place of such meeting shall be set by the Board of Directors, and at least 10 days' written notice thereof shall be given to each Owner.
3. **Annual Meetings.** Annual meetings of members of the Association shall be held on the second Tuesday of April each succeeding year after the year in which the First Annual Meeting is held at such time and place as shall be determined by the Board of Directors. At such meetings there shall be elected by ballot of the Owners a Board of Directors in accordance with the requirements of Article IV of these Bylaws. The Owners may also transact at annual meetings such other business of the Association as may properly come before them.
4. **Special Meetings.** It shall be the duty of the President to call a special meeting of the Owners as directed by resolution of the Board of Directors or upon a petition signed by 1/3 of the Owners presented to the Secretary of the Association. Notice of any special meeting shall state the time and place of such meeting and the purposes thereof. No business shall be transacted at a special meeting except as stated in the notice.
5. **Notice of Meetings.** It shall be the duty of the Secretary (or other Association officer in the Secretary's absence) to serve a notice of each annual or special meeting, stating the purpose thereof as well as of the time and place where it is to be held, upon each Owner of record, at least 10 days but not more than 60 days prior to such meeting. The mailing, postage prepaid, of a notice to the representative of each Owner at the address shown in the notice required to be filed with the Association by Article II, Section 3 of these Bylaws shall be deemed notice served. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association shall be deemed due notice.
6. **Adjournment.** If any meeting of Owners cannot be held because a quorum is not in attendance, the Owners who are present may adjourn the meeting to a time not less than 48 hours from the time the original meeting was called.
7. **Order of Business.** The order of business at all meetings of the members shall be as follows:
 - (a) roll call to determine the voting power represented at the meeting;
 - (b) proof of notice of meeting or waiver of notice;
 - (c) reading of minutes of preceding meeting;
 - (d) reports of officers;
 - (e) reports of committees;
 - (f) appointment of inspector of elections (at annual meetings or special meetings held for purpose of election of Directors or officers);
 - (g) election of Directors (at annual meeting or special meetings held for such purpose);
 - (h) unfinished business; and
 - (i) new business. The most senior officer of the Association present

at such meeting shall chair meeting of members. For purposes of this Section, the order of seniority of officers shall be President, Vice President, Secretary and Treasurer.

8. **Action Without Meeting.** Any action which may be taken at a meeting of the members (except for the election or removal of Directors) may be taken without a meeting by written ballot of the members. Ballots shall be solicited in the same manner as provided in section 5 for the giving of notice of meetings of members. Such solicitations shall specify (a) the number of responses needed to meet the quorum requirements; (b) the percentage of approvals necessary to approve the action; and (c) the time by which ballots must be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each matter and shall provide that, where the member specifies a choice, the vote shall be cast in accordance therewith. Approval by written ballot shall be constituted by receipt within the time period specified in the solicitation of (i) a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting; and (ii) a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast.
9. **Consent of Absentees.** The transactions at any meeting of members, either annual or special, however called and noticed, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy; and if, either before or after the meeting, each of the members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.
10. **Minutes, Presumption of Notice.** Minutes or a similar record of the proceedings of meetings of members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

ARTICLE IV BOARD OF DIRECTORS

1. **Number and Qualification of Directors.** The Board of Directors shall initially be comprised of 3 members and shall continue to be so comprised until enlarged to 5 members in accordance with the provisions of Section 2 hereof. Thereafter, the affairs of the Association shall be governed by a Board of 5 Directors all of whom must be members of the Association, except for the first Board of Directors, or its successors as selected by the Grantor. Directors shall serve without compensation.

2. Election of Directors.

- a) **First Board of Directors.** The first Board of Directors or its successors as selected by the Grantor, shall be composed of 3 persons and such first Board of Directors or its successors as selected by the Grantor shall manage the affairs of the Association until a successor Board of Directors is elected at the First Meeting of Members of the Association convened at the time required by these Bylaws. At such First Meeting of Members of the Association, the Board shall be increased in size from 3 persons to 5 persons. Thereafter, elections for non-grantor Owner Directors shall be held as provided in subsection (b) below.
- b) **Election of Directors at and After First Annual Meeting.** At the First Annual Meeting 3 Directors shall be elected for a term of 2 years and 2 Directors shall be elected for a term of 1 year. At such meeting all nominees shall stand for election as 1 slate and the 3 persons receiving the highest number of votes shall be elected for a term of 2 years and the 2 persons receiving the next highest number of votes shall be elected for a term of 1 year. At each annual meeting held thereafter, either 2 or 3 Directors shall be elected depending upon the number of Directors whose terms expire. After the First Annual Meeting, the term of office (except for 2 of the Directors elected at the First Annual Meeting) of each Director shall be 2 years. The Directors shall hold office until their successors have been elected and hold their first meeting.

3. **Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not prohibited by the Declaration, Articles of Incorporation or required thereby to be exercised and done by the Owners.

4. **Other Duties.** In addition to the foregoing duties imposed by these Bylaws or any further duties which may be imposed by resolution of the members of the Association, the Board of Directors shall be responsible specifically for the following:

- a) To manage and administer the affairs of and to maintain Walnut Creek Subdivision, and any future subdivisions annexed thereto, a platted subdivision;
- b) To encourage and to promote the highest standards of management and maintenance for the Subdivision.
- c) To levy and collect assessments against and from the members of the corporation and to use the proceeds thereof for the purposes of the corporation;
- d) To carry insurance and to collect and allocate the proceeds thereof
- e) To contract for and employ persons, firms, or corporations to assist in management, operation, maintenance and administration of said Subdivision;

- f) To make and enforce reasonable regulations concerning the use and enjoyment of said Subdivision;
- g) To own, maintain and improve, and to buy, sell, convey, assign, mortgage, or lease (as landlord or tenant) any real and personal property, for the purpose of providing benefit to the members of the corporation and in furtherance of any of the purposes of the corporation;
- h) To borrow money and issue evidences of indebtedness in furtherance of any or all of the objects of its business; to secure the same by mortgage, pledge or other lien;
- i) To enforce the provisions of the Declaration of Covenants and Restrictions for Walnut Creek Subdivision and of these Articles of Incorporation and such Bylaws and Rules and Regulations of this corporation as may herein after be adopted;
- j) In general, to enter into any kind of activity; to make and perform any contract and to exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of said Subdivision and to the accomplishment of any of the purposes thereof.

5. **Management Agent.** The Board of Directors may employ for the Association a professional management agent (which may include the Grantor or any person or entity related thereto) at reasonable compensation established by the Board to perform such duties and services as the Board shall authorize, including, but not limited to, the duties listed in sections 3 and 4 of this Article, and the Board may delegate to such management agent any other duties or powers which are not by law or by the Declaration, Articles of Incorporation or required to be performed by or have the approval of the Board of Directors or the members of the Association.

6. **Vacancies.** Vacancies in the Board of Directors which occur after the First Annual Meeting caused by any reason other than the removal of a Director by a vote of the members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, except that the Grantor shall be solely entitled to fill the vacancy of any Director whom it is permitted in the first instance to designate. Each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

7. **Removal.** At any regular or special meeting of the Association duly called with due notice of the removal action proposed to be taken, any one or more of the Directors may be removed with or without cause by the affirmative vote of more than 50% in number and in value of all of the Owners and a successor may then and there be elected to fill any vacancy thus created. The quorum requirement for the purpose of filling such vacancy shall be the normal 35% requirement set forth in Article II, Section 4. Any Director whose removal has been proposed by the Owner shall be given an opportunity to be heard at the meeting. The Grantor may remove and replace any or all of the Directors selected by it at any time or from time to time

in its sole discretion. Likewise, any Director selected by the non grantor Owners to serve before the First Annual Meeting may be removed before the First Annual Meeting in the same manner set forth in this paragraph for removal of Directors generally.

8. **First Meeting.** The first meeting of a newly elected Board of Directors shall be held within 10 days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.
9. **Regular Meetings.** Regular meetings of the Board of Directors may be held at such times and places as shall be determined from time to time by a majority of the Directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally, by mail, telephone or telegraph at least 10 days prior to the date named for such meeting.
10. **Special Meetings.** Special meetings of the Board of Directors may be called by the President on 3 days' notice to each Director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of two Directors.
11. **Waiver of Notice.** Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meetings of the Board shall be deemed a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
12. **Adjournment.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting to a subsequent time upon 24 hours' prior written notice delivered to all Directors not present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof, shall constitute the presence of such Director for purposes of determining a quorum.
13. **First Board of Directors.** The actions of the first Board of Directors of the Association or any successors thereto selected or elected by Grantor shall be binding upon the Association so long as such actions are within the scope of the powers and duties which may be exercised generally by the Board of Directors as provided in the Condominium Documents.

14. **Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds, The premiums on such bonds shall be expenses of administration.

ARTICLE V OFFICERS

1. **Officers.** The principal officers of the Association shall be a President, who shall be a member of the Board of Directors, a Vice President, a Secretary and a Treasurer. The Directors may appoint an Assistant Treasurer, and an Assistant Secretary, and such other officers as in their judgment may be necessary. One person may hold any two offices except that of President and Vice President.
- a) **President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of an association, including, but not limited to, the power to appoint committees from among the members of the Association from time to time as he may in his discretion deem appropriate to assist in the conduct of the affairs of the Association.
 - b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to so do on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.
 - c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; he shall have charge of the corporate seal, if any, and of such books and papers as the Board of Directors may direct; and he shall, in general, perform all duties incident to the office of the Secretary.
 - d) **Treasurer.** The Treasurer shall have responsibility for the Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association, and in such depositories as may, from time to time, be designated by the Board of Directors.
2. **Election.** The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

3. **Removal.** Upon affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose. No such removal action may be taken, however, unless the matter shall have been included in the notice of such meeting. The officer who is proposed to be removed, shall be given an opportunity to be heard at the meeting.
4. **Duties.** The officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board of Directors.

ARTICLE VI SEAL

The Association may (but need not) have a seal. If the Board determines that the Association shall have a seal, then it shall have inscribed thereon the name of the Association, the words "corporate seal", and "Michigan"

ARTICLE VII FINANCE

1. **Assessments.** Every member shall pay an annual assessment, which shall be levied by the Board of Directors, which shall be used exclusively for the purposes of the Association as set forth in the Declaration. The Board of Directors shall fix the due date of such annual assessments and they shall send written notice of such assessment to each member.
2. **Fiscal Year.** The fiscal year of the Association shall be an annual period commencing on such date as may be initially determined by the Directors. The commencement date of the fiscal year shall be subject to change by the Directors for accounting reasons or other good cause.
3. **Bank.** Funds of the Association shall be initially deposited in such bank or savings association as may be designated by the Directors and shall be withdrawn only upon the check or order of such officers, employees or agents as are designated by resolution of the Board of Directors from time to time. The funds may be invested from time to time in accounts or deposit certificates of such bank or savings association as are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation and may also be invested in interest-bearing obligations of the United States Government.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

1. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety, welfare and recreation of the residents of the Walnut Creek Subdivision, including, but not limited to the improvement and maintenance, repair and replacement of, and insurance for the Community Areas and all improvements thereon, the maintenance of residential Areas and Assessment units in accordance with the provisions of Article IX, Section 5 hereof, the payment of taxes and assessments, if any, levied against the Community Areas and, in general, the carrying out of the purposes set forth in or permitted by this Declaration and for the general welfare of the Walnut Creek Subdivision. The Association may provide for reasonable reserves for contingencies, replacements and improvements.

2. **Method of Assessment.** The following shall be assessable:
 - a) The assessment shall be made against all Assessment Units in the Walnut Creek Subdivision. The Community Areas, except to the extent of an undivided ownership interest therein owned by the Owner of any Assessment Unit within a condominium project, shall not be subject to assessments hereunder. The items of expense which are included within the annual assessment shall be determined by the Association in its sole discretion, subject to the limitations set forth in this Article VIII, Section 2, and shall be subject to equal proration among the Assessment Units.

 - b) The total assessment shall be made against each Assessment Unit as provided in subparagraph a. above, subject to the following:
 - i. The initial assessment for the fiscal year 1997-98 shall not exceed \$100.00 per year per Assessment Unit.

 - ii. The \$100.00 assessment limitation set forth in subparagraph (i) above shall be subject to upward adjustments by the Association of no more than 10% per year commencing July 1, 1998 and continuing for each year thereafter, unless a greater increase is approved by the vote of a majority of the Assessment Units then entitled to vote.

3. **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy a special assessment for: the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon. The Community Areas, including fixtures and personal property relating thereto, the cost of establishing or adding to a reserve therefore, provided that any such assessment shall have the approval, at a meeting duly called for such purpose, of the votes of the Owners of more than 60% of all Assessment Units, giving one vote for each Assessment Unit. Voting at such meeting shall be in person, by proxy or by a written absentee ballot in which the question or questions to be decided are specifically set forth. Notwithstanding the foregoing, special assessments may be levied by the Association

without a vote of Assessment Unit Owners against individual Owners of Assessment Units as provided in Article JX, Section 5 hereof and may also be levied to relieve any deficiency in the Community Associations current operating funds to provide for maintenance, repair and/or replacement of the Community Areas and any facilities therein.

4. **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Assessment Units, except for special assessments pursuant to the power reserved to the Association pursuant to Article IX, Section 5 hereof, which shall be assessed as provided therein.
5. **Assessments: Date of Commencement and Due Dates.** The Association shall fix the rate of the annual assessment, subject to the limitations set forth in this Article VIII, Section 2 hereof, and the amount of assessment against each Assessment Unit at least thirty (30) days in advance of each annual assessment period. Written notice of annual assessments shall be sent to every Owner immediately after action assessing the same, provided, however that where there is more than one Owner of an Assessment Unit, only one notice need be sent. The due date for payment shall be established and shall be stated in said notice. The Association shall, upon demand by any person having an interest in an assessment Unit, furnish a certificate signed by an authorized person with knowledge setting forth whether or not all assessments have been paid and setting forth the unpaid amounts, if any, interest charges and due dates. Each Owners' association shall, upon request by the Association, report the names and addresses of all Assessment Unit Owners who have failed to pay the assessments levied hereunder.
6. **Effect of Non-Payment of Assessments: Remedies.** Any assessment not paid within thirty (30) days after the due date (together with expenses of collection set forth below) shall bear interest from the due date at the rate of 8% per annum or at such lesser uniform rate as shall be established by the Association, the time of the fixing of the assessment period. Additionally, the association may set automatic late charges and/or assess fines for the failure of an Owner to pay his assessments in a timely manner provided that the same is done on a uniform basis for all Assessment Units. The Association may bring an action against a delinquent Owner or other person personally obligated to pay the same and/or may foreclose the lien established by the terms of this Declaration in the same manner that real estate mortgages may be foreclosed by action under Michigan law. The expenses incurred in collecting unpaid assessments including interest, costs and attorneys' fees and advances for taxes and other liens to protect the lien for assessments shall be chargeable to the Owner in default and shall be secured by the lien on his parcel or assessment unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Community Areas or by abandonment of his Assessment Unit.
7. **Creation of the Lien and Personal Obligation for Assessments.** The Grantor hereby covenants, and each Owner of any Assessment Unit by acquisition of title thereto or an interest therein is deemed to covenant, and agrees to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall from date of

assessment be a charge and a continuing lien upon the Assessment Unit against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such Assessment unit at the time within the assessment fell due, except a land contract purchaser shall be so personally liable and such land contract not be personally liable for such assessments levied up to and including the date upon which such land contract seller actually retakes possession of such Assessment unit following extinguishment of all rights of the land contract purchaser of the Assessment Unit. The personal obligation for the delinquent assessment shall not pass to successor Owners unless expressly assumed by them.

8. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on any of the properties. Sale or transfer of any Assessment Unit shall not affect the assessment lien. However, the sale or transfer of any parcel or Assessment Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment charges to all properties, including the mortgaged property). Foreclosure sale or transfer in lieu thereof shall relieve such parcel or dwelling unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE IX GENERAL

1. **Remedies for violations:** For a violation breach of any of these reservations, covenants, conditions, restrictions, and rules and regulations of the Declaration, the Grantor, the Association, or any member of the Association, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent or obtain damages for the violation or breach of any provision hereof or to seek relief as follows:
 - a) **Legal Action.** Failure to comply with any of the terms or provisions of this declaration shall be grounds for relief, which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien (if default in payment or assessment) or any combination thereof, and such relief may be sought by the Grantor, the Association, or if appropriate, by an aggrieved Owners' Association.
 - b) **Recovery of Costs.** In any proceeding which arises because of an alleged default under this Declaration of the Association or the Owner of any Assessment Unit, then the Grantor, the Association or the member of the Association seeking enforcement, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees (not limited to statutory fees) as may be determined by the court, but in no event shall any Assessment Unit Owner or Owners' Association be entitled to recover such attorney's fees.

- c) **Abatement.** The violation of any of the provisions of this Declaration or rules and regulations shall also give the Grantor, the Association or any member of the Association, the right, in addition to the rights set forth above, to enter upon any Residential Area, any Assessment Unit, or any of the Community Areas, where reasonably necessary, and summarily remove, abate or rectify, at the expense of the person or entity committing the infraction, any structure, thing or condition maintained contrary to the provisions of this Declaration. The Association shall have no liability to any person arising out of its removal, abatement and rectification power authorized herein. The powers herein set forth are granted both generally and specifically in furtherance of Article V, Section 5 hereof.
- d) **Assessment of Fines.** The violation of any of the provisions of this Declaration by any Owner of any Assessment Unit shall be grounds for assessment by the Association, acting through its duly constituted Board of Directors, of monetary fines for such violations. No fine may be assessed unless rules and regulations establishing such fine have first been duly adopted by the Board of Directors of the Association and notice thereof given to the offending Assessment Unit Owner-. All fines duly assessed may be collected in the same manner as provided in Article IV of this Declaration. There shall be no fine for an initial infraction and no fine shall exceed \$25 for the second violation, \$50 for the third violation, or \$100 for any subsequent violation.
- e) **Non-waiver of Right.** The failure of the Grantor, the Association or of any other person or entity within the Walnut Creek Subdivision to enforce any right, provision, covenant or condition which may granted by this Declaration shall not constitute a waiver of the right of the Grantor or Association or such person or entity to enforce such right, provision, covenant condition in the future. Anything contained herein to the contrary notwithstanding, in the event the Association shall at any time fail to perform such maintenance as is reasonable and necessary to allow the storm water retention system to function in the manner in which it was designed (the "retention maintenance obligation"), the City shall perform the retention maintenance obligation in accordance with the requirements and provisions of this declaration. The City acknowledges and agrees that its obligation to perform the retention maintenance obligation shall be obligatory and not discretionary, notwithstanding any other provisions of this Article V. The foregoing shall not obligate the City to perform any other maintenance obligations with respect to any of the Community Areas other than to a storm retention area which is not properly functioning. It is the intention of the parties that the maintenance obligation of the City be discretionary except for the retention maintenance obligation, which shall be mandatory.
- f) **Cumulative Rights, Remedies and Privileges.** All rights, remedies and privileges granted to the Grantor or Association or any other person or entity pursuant to any terms, provisions, covenants or conditions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available

to such party at law or in equity.

2. **Rules and Regulations.** The Association shall have the right to make reasonable rules and regulations to carry out the terms of this Declaration and to fulfill its purposes. Such rules and regulations may include but are not limited to rules and regulations for the following purposes:
 - a) Rules concerning the use of the Community Areas and the conduct of users thereof.
 - b) Rules establishing minimum standards for maintenance of landscaping and roads within the Residential Areas and Assessment Units in the Walnut Creek Subdivision.
 - c) Rules establishing minimum standards for the exterior appearance of Residential Areas and Assessment Units in the Walnut Creek Subdivision.

Grantor hereby covenants, and each Owner of any Assessment Unit by acquisition of title thereto is deemed to covenant, and to abide by such rules and regulations.

3. **Addition of Community Areas and Residential Areas.** Grantor may hereafter add, by separate recorded Declaration or by amendment to this Declaration, other land in the vicinity of the Walnut Creek Subdivision to the Residential Areas and the Community Areas. Grantor may, as development progresses, add additional open space to the Community Areas and may, but shall not be obligated to, add other parcels to the Community Areas to be used for recreational or common amenity purposes. Grantor may also, in its sole discretion, convey to the Association other Community Areas as may be constructed and added to this Declaration. The rights of the Grantor as reserved in this Section 3 shall remain throughout the period of development by Grantor of the Walnut Creek.

4. **Association Bank Account.** All assessments collected by Grantor shall be held in and expended from a separate bank account in the name of the Association. Said assessments and the expenditures thereof shall be accounted for pursuant to generally accepted accounting procedures. After the Association is controlled by the Class B members, the books of account shall be audited annually by qualified independent auditors; provided, however, that such auditors need not be certified public accountants nor does such audit need to be a certified audit. The costs of any audit and accounting expenses shall be borne by assessments.

5. **Maintenance of Residential Areas and Assessment Units.** It shall be the responsibility of the Association to oversee the attractiveness of the Residential Areas and Assessment Units in the Walnut Creek Subdivision. In furtherance of the provisions of this Section, the Association shall also undertake certain additional responsibilities from time to time, as follows:

- a) The Association shall have the right to assume temporary control over any area of the Walnut Creek, which shall have been allowed by the Owner thereof to deteriorate to an unaesthetic condition to rectify such condition.

- b) The Association shall also have the right, in its sole and absolute discretion, to take on certain maintenance responsibilities in the Residential Areas and Assessment Units including, but not by way of limitation, lawn maintenance, grasscutting, landscaping, watering, snow removal, exterior maintenance and the maintenance of the Type III well system. Maintenance of the exterior or buildings shall be limited to that maintenance which impacts upon the aesthetic appearance of such buildings and it shall remain the right of the Owners of Assessment Units within the Walnut Creek Subdivision to determine any matter or quality of materials and workmanship in repairs which will not impact adversely upon the appearance of such building (Ex: length of estimated life for a roof replacement if such roof shall remain aesthetically acceptable throughout its expected life.)
- c) The Association shall have the right to accept broad delegations of authority from any Owner within the Walnut Creek Subdivision or single-family residential development established in the Walnut Creek Subdivision, to provide technical assistance to such Owner or Owners' Association in any matter of administration or maintenance, or to contract for the provision of and performance of such services.
- d) Generally, the Association shall have the right to undertake, in its discretion, any responsibilities, which promote the general welfare of the Walnut Creek Subdivision so long as any costs in connection therewith are reasonably apportioned among all Owners.

The expense resulting from the Association's increased obligations as provided in subsections (a) through (c) above shall be specially assessed to the Assessment Unit Owner or Owners benefiting from or causing such condition and shall not be an expense of administration chargeable to any other Owners. Such special assessment shall be a charge and a lien upon the Assessment unit against which each such special assessment is made in the same manner as any other assessment assessed hereunder as described in Article IV hereof and giving rise to the remedies described therein.

The Association shall have an easement of access to all of the Walnut Creek Subdivision to enable it to perform the maintenance and do all things necessary for the furtherance of the purposes of this Declaration, and shall have the right to the use of any portion of the Residential Areas deemed reasonably and demonstrably necessary to the promotion of the general welfare of the Walnut Creek and the furtherance of the purposes of this Declaration.

ARTICLE X EXCULPATION OF LIABILITY: INDEMNIFICATION

1. **Exculpation of Liability.** Unless otherwise provided by law or expressly assumed, a person who is a Director or Officer, or both, shall not be liable for the acts, debts or liabilities of the Corporation.

2. **Indemnification.** Every Director and officer of the Association shall be indemnified by the Association against all expenses and liabilities, including, but not limited to, counsel fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party or in which they may become involved by reason of their being or having been a Director or officer of the Association, whether or not they are a Director or officer at the time such expenses are incurred.

The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled. At least 10 days prior to payment of any indemnification, which it has approved, the Board of Directors shall notify all Owners thereof. Further, the Board of Directors is authorized to carry officers' and directors' liability insurance covering acts of the officers and directors of the Association in such amounts as it shall deem appropriate.

ARTICLE XII AMENDMENTS

1. **Proposal.** Amendments to these Bylaws may be proposed by the Board of Directors of the Association acting upon the vote of the majority of the Directors or may be proposed by 1/3 or more in number of the Owners by instrument in writing signed by them.
2. **Meeting.** Upon any such amendment being proposed, a meeting for consideration of the same shall be duly called in accordance with the provisions of these Bylaws.
3. **Voting.** These Bylaws may be amended by the Owners at any regular meeting or a special meeting called for such purpose by an affirmative vote of not less than threefourths (3/4ths) of all Owners.
4. **By Grantor.** Prior to the elapse of 2 years after the First Annual Meeting, the Grantor without approval from any other person may amend these Bylaws.
5. **When Effective.** Any amendment to these Bylaws shall become effective immediately upon adoption.
6. **Binding.** A copy of each amendment to the Bylaws shall be furnished to every member of the Association after adoption; provided, however, that any amendment to these Bylaws that is adopted in accordance with this Article shall be binding upon all persons who have an interest in the Subdivision irrespective of whether such persons actually receive a copy of the amendment.

**ARTICLE XIII
COMPLIANCE**

These Bylaws are set forth to comply with the requirements of Act No.162 of the Public Acts of 1982, as amended, and with the duly recorded Declaration. In case any of these Bylaws conflict with the provisions of the statute or with the provisions of the Declaration, the provisions of the statute and Declaration shall be controlling.


Salvatore Cottone, Incorporator