

282⁰⁰
a
(138)

WTAY

AFTER RECORDING, RETURN TO:

ERC Land Development Group, LLC
1000 West Wilshire, Suite 308
Oklahoma City, Oklahoma 73116
Attention: Tracy A. Markum

Num. Index _____
B. & P.N. Index _____
Margin _____

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR SOMERS POINTE, A RESIDENTIAL
COMMUNITY TO THE CITY OF OKLAHOMA CITY,
CANADIAN COUNTY, OKLAHOMA**

Prepared by: **Matthew L. Winton, Esq.**

VAUGHN & WINTON PLLC
2801 East Memorial Road, Suite 110
Edmond, Oklahoma 73013
405.478.4818/405.478.4819 fax
WWW.VAUGHNANDWINTON.COM

TABLE OF CONTENTS

	<u>Page</u>
Article 1 Creation of the Community	5
1.1 Purpose and Intent	5
1.2 Binding Effect and Term	6
1.3 Governing Documents	6
Article 2 Definitions	7
2.1 "Articles"	7
2.2 "Architectural Review Committee"	7
2.3 "Association"	7
2.4 "Base Assessment"	7
2.5 "Board of Directors" or "Board"	7
2.6 "Builder"	7
2.7 "Bylaws"	7
2.8 "Certificate of Architectural Compliance"	7
2.9 "Class "B" Control Period"	8
2.10 "Common Area"	8
2.11 "Common Expenses"	8
2.12 "Declarant"	8
2.13 "Dedicated Property"	8
2.14 "Design Review Board"	8
2.15 "Design Review Guidelines"	8
2.16 "Development Plan"	8
2.17 "ERC"	9
2.18 "Lot"	9
2.19 "Member"	9
2.20 "Mortgage"	9
2.21 "Mortgagee"	9
2.22 "Owner"	9
2.23 "Person"	9
2.24 "Plans"	9
2.25 "Properties"	9
2.26 "Record," "Recording," or "Recorded"	9
2.27 "Series"	9
2.28 "Series Assessments"	10
2.29 "Series Board Member"	10
2.30 "Series Common Area"	10
2.31 "Series Expenses"	10
2.32 "Special Assessment"	10

2.33	"Specific Assessment"	10
2.34	"Supplemental Declaration"	10
2.35	"Terra Verde"	10
2.36	"Somers Pointe"	10
2.37	"Governing Documents"	10
2.38	"Somers Pointe-Wide Standard"	10
2.39	"Use Restrictions and Rules"	11

Article 3 Use and Conduct 11

3.1	Framework for Regulation	11
3.2	Rule Making Authority	11
3.3	Owners' Acknowledgment and Notice to Purchasers	12
3.4	Protection of Owners and Others	12

Article 4 Architecture and Landscaping 13

4.1	General	13
4.2	New Construction	14
4.3	Modifications	14
4.4	No Waiver of Future Approvals	15
4.5	Variances	15
4.6	Limitation of Liability	15
4.7	Certificate of Compliance	16
4.8	Fees; Assessments	16
4.9	Declarant and Design Review Board Addresses	16

Article 5 Maintenance and Repair 17

5.1	Maintenance of Lots	17
5.2	Maintenance of Series Property	17
5.3	Responsibility for Repair and Replacement	17

Article 6 The Association and its Members 18

6.1	Function of Association	18
6.2	Membership	18
6.3	Voting	18
6.4	Series Voting	19

Article 7 Association Powers and Responsibilities 21

7.1	Acceptance and Control of Association Property	21
7.2	Maintenance of Common Areas	21
7.3	Insurance	22
7.4	Compliance and Enforcement	26
7.5	Implied Rights; Board Authority	27
7.6	Indemnification of Officers, Directors and Others	28
7.7	Security	28
7.8	Powers of the Association Relating to Series	29

7.9	Provision of Services	29
7.10	Facilities and Services Open to the Public	29
7.11	Association's Responsibility with Respect to Transfer of Lots	29

Article 8 Association Finances 30

8.1	Budgeting and Allocating Common Expenses	30
8.2	Budgeting and Allocating Series Expenses	31
8.3	Budgeting for Reserves	32
8.4	Special Assessments	32
8.5	Specific Assessments	32
8.6	Authority to Assess Owners; Time of Payment	33
8.7	Obligation for Assessments	33
8.8	Lien for Assessments	34
8.9	Exempt Property	35
8.10	Limitation on Increases of Assessments	35

Article 9 Expansion of Somers Pointe 36

9.1	Expansion by Declarant	36
9.2	Expansion by the Association	36
9.3	Additional Covenants and Easements	36
9.4	Effect of Recording Supplemental Declaration	37
9.5	Condominium Conversions	37

Article 10 Additional Rights Reserved to Declarant 37

10.1	Withdrawal of Property	37
10.2	Marketing and Sales Activities	37
10.3	Right to Develop	38
10.4	Right to Approve Changes in Standards	38
10.5	Right to Transfer or Assign Declarant Rights	38
10.6	Exclusive Rights to Use Name of Development	38
10.7	Termination of Rights	39

Article 11 Easements 39

11.1	Easements in Common Area	39
11.2	Easements of Encroachment	40
11.3	Easements for Utilities, Etc.	41
11.4	Easements to Serve Additional Property	41
11.5	Easements for Maintenance, Emergency and Enforcement	42
11.6	Easements for Irrigation, Detention/Retention Maintenance and Flood Water	42
11.7	Easements for Drainage Areas	43
11.8	Easement for Screening and Fencing	43

Article 12 Series Common Areas 44

12.1	Purpose	44
12.2	Designation	44

12.3	Use by Others	44
Article 13 Dispute Resolution and Limitation on Litigation		45
13.1	Consensus for Association Litigation	45
13.2	Dispute Resolution and Enforcement	45
Article 14 Mortgagee Provisions		46
14.1	Notices of Action	46
14.2	Special FHLMC Provision	46
14.3	Other Provisions for First Lien Holders	47
14.4	Amendments to Documents	47
14.5	No Priority	48
14.6	Notice to Association	48
14.7	Failure of Mortgagee to Respond	49
14.8	Construction of Article 14	49
Article 15 Relationship with City of Oklahoma City, Canadian County, and Media		49
Article 16 Changes in Ownership of Lots		49
Article 17 Changes in Common Areas		50
17.1	Condemnation	50
17.2	Partition	50
17.3	Transfer or Dedication of Common Area	50
Article 18 Amendment of Declaration		51
18.1	By Declarant	51
18.2	By Members	51
18.3	Validity and Effective Date	51
18.4	Exhibits	52

Table of Exhibits

- Exhibit "A" – Real Property
- Exhibit "B" – Real Property Subject to Annexation or Addition
- Exhibit "C" – Use Restrictions and Rules
- Exhibit "D" – Bylaws of Somers Pointe Property Owners' Association, Inc.
- Exhibit "E" – Calculation of Assessments
- Exhibit "F" – Design Review Guidelines

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR SOMERS POINTE, A RESIDENTIAL
COMMUNITY TO CITY OF OKLAHOMA CITY, CANADIAN COUNTY,
STATE OF OKLAHOMA**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR SOMERS POINTE, A RESIDENTIAL COMMUNITY TO THE CITY OF OKLAHOMA CITY, CANADIAN COUNTY, OKLAHOMA is made this 21st day of October, 2004, by ERC LAND DEVELOPMENT GROUP, LLC, an Arkansas limited liability company and TERRA VERDE DEVELOPMENT, L.L.C., an Oklahoma limited liability company.

PART ONE: INTRODUCTION TO THE COMMUNITY

The Declarant has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of Somers Pointe as a quality residential community.

This Declaration contemplates the existence, within Somers Pointe, of one or more distinct areas, collectively referred to herein as "Series" and individually as "Somers Park," "Somers Village," "Somers Ridge" and "Somers Villas," as well as other individually owned property. The Association is a homeowners association comprised of all Owners of Lots in Somers Pointe.

The Association has the power under the Governing Documents to establish standards for conduct and activities for the property within Somers Pointe. Another component of the Somers Pointe development is the Design Review Board, which has jurisdiction over all matters of design review for all Lots within Somers Pointe.

Article 1 Creation of the Community
1.1 Purpose and Intent.

ERC, as the owner of the real property described in Exhibit "A," and the Declarants as the owners of the real property described at Exhibit "B," intend by the Recording of this Declaration to create a general plan of development for the planned community known as Somers Pointe. This Declaration provides a flexible and reasonable procedure for future expansion of Somers Pointe to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the real property now and hereafter comprising Somers Pointe. An integral part of the development plan is the creation of the Association to be comprised of all Owners of Lots in Somers Pointe, to own, operate and/or maintain various Common Areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This Declaration does not and is not intended to create a unit ownership estate within the meaning of 60 O.S. §501 *et seq.* This document does and is intended to create a real estate development and owners association within the meaning of 60 O.S. §851 *et seq.*

1.2 Binding Effect and Term.

The real property described in Exhibit "A" and any of the Exhibit "B" additional real property which is made a part of Somers Pointe in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the land and title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Somers Pointe, their respective heirs, successors, successors-in-title, and assigns.

This Declaration shall remain in effect for a term of forty (40) years from the date Recorded. Declarant, the Association, any Owner and their respective legal representatives, heirs, successors, and assigns may enforce it. After such forty (40) year period, the Declaration's term shall automatically extend for successive ten (10) year periods unless seventy-five percent (75%) of the then Owners sign and Record, within the year preceding any extension, an instrument which terminates, adds to, or amends, in whole, or in part, this Declaration.

If any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire twenty-one (21) years after the death of the last survivor of the now living descendants of the youngest living President of the United States having a descendant. Nothing in this Section shall be construed to permit termination of any easement, covenant, restriction, or obligation created in this Declaration without the consent of the holder of such easement.

1.3 Governing Documents.

The Governing Documents create a general plan of development for Somers Pointe which may be supplemented by additional covenants, restrictions, and easements applicable to the property within Somers Pointe. In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, and/or the provisions of any other articles of incorporation, Bylaws, or rules or policies, the Declaration shall control.

Nothing in this Section shall preclude the Recording of a Supplemental Declaration or other instrument applicable to any portion of Somers Pointe containing additional restrictions or more restrictive provisions. However, any Person who seeks to Record any instrument applicable to Somers Pointe must obtain Declarant's written consent so long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant, so long as Declarant owns any of the Properties.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of all Lots, as well as their respective tenants, guests and invitees. Any lease of a Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of Governing Documents.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

Article 2 Definitions.

The terms used in the Governing Documents shall be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below. If not defined herein, capitalized terms shall be defined as set forth in the Declaration, as applicable.

2.1 "**Articles**": The Certificate of Incorporation, as amended from time to time, for the Association filed with the Oklahoma Secretary of State on April 15, 2004.

2.2 "**Architectural Review Committee**": The successor to any Design Review Board, if so assigned by the applicable Design Review Board.

2.3 "**Association**": The Somers Pointe Property Owners' Association, Inc., an Oklahoma not for profit corporation, its successors or assigns.

2.4 "**Base Assessment**": Assessments levied on all Lots subject to assessment under Article 8 of this Declaration to fund Common Expenses for the general benefit of all Lots.

2.5 "**Board of Directors**" or "**Board**": The body responsible for administration of the Association as provided in the Governing Documents.

2.6 "**Builder**": Any Person approved by the Declarant who purchases Lots in bulk (multiple) fashion for the purpose of building residential dwellings which will be sold to the general public. The Builders shall not be responsible for Base Assessments on a Lot until the earlier of the date of issuance of a certificate of occupancy by the City of Oklahoma City for such Lot or the second anniversary of filing of the plat for the applicable Series within Somers Pointe.

2.7 "**Bylaws**": The Governing Document appearing at Exhibit "D" to this Declaration, as amended.

2.8 "**Certificate of Architectural Compliance**": Certificate issued pursuant to Section 4.7 to this Declaration.

2.9 **"Class "B" Control Period"**: The period of time during which the Class "B" Member is entitled to exercise, among other things, any addition or annexation rights under Section 9.1 to this Declaration.

2.10 **"Common Area"**: All real and personal property, including, but not limited to, easements and Series Common Area, if any, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

2.11 **"Common Expenses"**: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not be limited to those expenses relative to the care of Common Area. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Members representing a majority of the total Class "A" votes of the Association.

2.12 **"Declarant"**: Collectively, ERC and Terra Verde, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant. For the purpose of exercising any development right, amendment right, or other right reserved to a Declarant, Declarant shall mean ERC, Terra Verde, or both as the context implies. For example, when a Governing Document refers to a declarant within the Somers Park Series, such reference shall mean ERC exclusively. Further, when a Governing Document refers to a declarant within the Somers Village, Somers Ridge, or Somers Villas Series, such reference shall mean Terra Verde exclusively. Any exercise of any development right, amendment right, or other right reserved to a declarant shall apply only to such Series over which the declarant governs, unless such exercise occurs jointly by both Declarants.

2.13 **"Dedicated Property"**: Real property dedicated by recorded instrument to a public authority and/or utility for public use.

2.14 **"Design Review Board"**: Generally, the entity with jurisdiction over the approval and denial of all applications for new construction and modifications of existing construction. Specifically, each Series contains its own Design Review Board, as provided under Section 4 to this Declaration.

2.15 **"Design Review Guidelines"**: The architectural rules, policies, and requirements governing new construction and modifications within the Properties as administered by the applicable Design Review Board.

2.16 **"Development Plan"**: The land use plan for the development of Somers Pointe approved by the City of Oklahoma City, Oklahoma and recorded with the County Clerk of Canadian County, Oklahoma, as it may be amended, which may include all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of real

property on the Development Plan shall not, under any circumstances, obligate Declarant to subject such real property to this Declaration, nor shall the omission of real property described in Exhibit "B" from the Development Plan bar later submission of such real property to this Declaration as provided in Article 9 of this Declaration.

2.17 **"ERC"**: ERC Land Development Group, L.L.C., an Arkansas limited liability company, its successors and assigns.

2.18 **"Lot"**: Each of the Lots depicted on the plat Recorded with the County Clerk of Canadian County, Oklahoma for the Series.

2.19 **"Member"**: A Person subject to membership in the Association pursuant to Section 6.2 of this Declaration. Every Owner shall be a Member, subject to the limitations on co-Owners as provided in this Declaration and the Bylaws.

2.20 **"Mortgage"**: A mortgage, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

2.21 **"Mortgagee"**: A beneficiary or holder of a Mortgage.

2.22 **"Owner"**: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

2.23 **"Person"**: A natural person, a corporation, a partnership, a trustee, a limited liability company, or any other legal entity.

2.24 **"Plans"**: Collectively, the elevation, drawings, application and other documents prepared by an Owner, or as applicable a Builder, to a Design Review Board.

2.25 **"Properties"**: The real property described within Exhibits "A" and "B" to this Declaration.

2.26 **"Record," "Recording," or "Recorded"**: To file, filing, or filed of record in the official records of the County Clerk of Canadian County, State of Oklahoma. The date of Recording shall refer to that time at which a document, map, or plat is Recorded.

2.27 **"Series"**: A group of more than one Lot designated as a distinct area for one or more of the following purposes: (a) sharing Series Common Areas, (b) receiving other benefits or services from the Association which are not provided to all Lots within Somers Pointe, or (c) electing a Series Board Member as provided in Section 6.4 of this Declaration. A Series may be comprised of more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Lots within a particular Series, then

the benefited Lots shall constitute a sub-Series for purposes of determining and levying Series Assessments for such benefits or services.

2.28 "**Series Assessments**": Assessments levied against the Lots in a particular Series or multiple Series to fund Series Expenses, as described in Section 8.2 of this Declaration.

2.29 "**Series Board Member**": Such Association board member elected from within a Series for representation of such Series interests on the Association Board.

2.30 "**Series Common Area**": A portion of the Common Area primarily benefiting one or more, but less than all, Series, as more particularly described in Article 12 of this Declaration.

2.31 "**Series Expenses**": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Lots within a particular Series or multiple Series, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may specifically be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Series or multiple Series.

2.32 "**Special Assessment**": Assessments levied in accordance with Section 8.4 of this Declaration.

2.33 "**Specific Assessment**": Assessments levied in accordance with Section 8.5 of this Declaration.

2.34 "**Supplemental Declaration**": An instrument Recorded pursuant to Article 9 of this Declaration, which accomplishes one or more of the following purposes: (a) subjects additional Exhibit "B" property to this Declaration; (b) designates Series or Series Common Areas; or (c) imposes, expressly or by reference, additional restrictions and obligations on the real property described in such instrument.

2.35 "**Terra Verde**": Terra Verde Development, L.L.C., an Oklahoma limited liability company, its successors and assigns.

2.36 "**Somers Pointe**": The real property described in Exhibit "A," together with such additional Exhibit "B" property as is subjected to this Declaration in accordance with Article 9 of this Declaration.

2.37 "**Governing Documents**": A collective term referring to this Declaration and any applicable Supplemental Declaration, the Bylaws, the Articles, the Use Restrictions and Rules and any Design Review Guidelines promulgated in accordance with Section 4 of this Declaration, as amended.

2.38 "**Somers Pointe-Wide Standard**": The standard of conduct, maintenance, or other activity generally prevailing throughout Somers Pointe. Such standard shall be established initially by Declarant and may be more specifically defined in the Use Restrictions and Rules,

Design Review Guidelines, and in Board resolutions, the budget, levels of maintenance and the Association's operation of Common Areas and applicable facilities.

2.39 "Use Restrictions and Rules": The initial use restrictions and rules attached hereto as Exhibit "C" and made a part hereof, as supplemented, modified or repealed pursuant to Article 3 of this Declaration.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use, conduct, maintenance, and architecture at Somers Pointe give the community its identity and make Somers Pointe a place people want to call "home." The standards are more than simply rules. This Declaration establishes procedures for rulemaking as a dynamic process which allows the community standards to evolve as the community changes and grows and as technology and public perception change.

Article 3 Use and Conduct.

3.1 Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for Somers Pointe, a framework of affirmative and negative covenants, easements, and restrictions which govern Somers Pointe. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technologies which inevitably will affect Somers Pointe, its Owners and residents. This Article establishes procedures for modifying and expanding the Use Restrictions and Rules. Any modification or expansion shall be effective whether or not Recorded. Each Owner is charged with determining the scope, terms, and nature of any restrictions, rules, and Design Review Guidelines pertaining to Somers Pointe, whether or not such documents are Recorded, provided such document is adopted pursuant to the terms of this Declaration.

3.2 Rule Making Authority.

(1) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules. The Use Restrictions and Rules will apply to Lots, Common Areas, Owners, Persons, Series, Series Common Areas, and the Association. The Board shall send notice by mail to all Owners concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (3) below, unless disapproved at a meeting by Members representing more than fifty percent (50%) of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have

no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the Bylaws.

(2) Alternatively, the Members, at an Association meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions and Rules by a vote of Members representing more than fifty percent (50%) of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(3) In an effort to assist any Owner in discharging their duty of inquiry under 3.1 of this Declaration, at least thirty (30) days prior to the effective date of any action taken under subsections (1) or (2) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Use Restrictions and Rules to each Owner specifying the effective date which, in no event, will be sooner than thirty (30) days from the date of adoption. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member or Mortgagee. Failure to affirmatively provide a copy of the new rule or explanation of any changes in the Use Restrictions and Rules, unless an Owner, Member, or Mortgagee expressly requests in writing a copy of the same, shall not affect the validity or effect of such rule or explanation thirty (30) days after adoption.

3.3 Owners' Acknowledgment and Notice to Purchasers.

All Owners are hereby given notice that use of their Lots and the Common Area is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of such Owner's Lot can be affected by this provision and that the Use Restrictions and Rules may change from time to time. All purchasers of Lots are on notice that changes may have been adopted by the Association. Copies of the current Use Restrictions and Rules may be obtained from the Association as provided above.

3.4 Protection of Owners and Others.

Except as may be contained in this Declaration either initially or by amendment or in the Use Restrictions and Rules and the Design Review Guidelines, all policies and regulations shall comply with the following provisions:

(1) **Similar Treatment.** Similarly situated Owners shall be treated similarly; provided, the Design Review Guidelines and Use Restrictions and Rules may vary by Series.

(2) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling. No rules shall unreasonably regulate the content of political signs. The rules may regulate the time, place and manner of posting such signs (including design criteria).

(3) **Household Composition.** No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and such occupants' fair use of the Common Area.

(4) **Activities within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association, in the Association's sole discretion, may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(5) **Alienation.** No rule shall prohibit leasing or transfer of any Lot, or require consent of the Association or Board for leasing or transfer of any Lot; provided, the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association of administering that lease or transfer.

(6) **Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in or on a Lot prior to the adoption of such rule and which was in compliance with all rules previously in force. This dispensation shall apply only for the duration of such Owner's ownership of the Lot personally, and this right shall not run with title to any Lot.

(7) **Reasonable Basis.** No rule may prohibit any activity, condition, or conduct unless there a reasonable basis exists for the enactment of such rule. For purposes of this subsection, reasonable basis may include, but not be limited to, restrictions as to time, place, and manner of activity or conduct, or concerns relating to safety, fair use of Common Area, cost, aesthetics, or the goals of the Development Plan.

(8) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Properties.

The limitations in subsections (1) through (8) of this Section shall only limit rulemaking authority exercised under Section 3.2 of this Declaration; they do not limit amendments to this Declaration adopted in accordance with Article 18 of this Declaration or rights retained by the Declarant under Section 9.1 of this Declaration.

Article 4 Architecture and Landscaping.

4.1 General.

The applicable Design Review Board shall have primary jurisdiction over all matters of design review for property in Somers Pointe. A Design Review Board exists for each Series

within the Properties and retains exclusive architectural approval oversight within its Series. For example, the Somers Park Design Review Board oversees exclusively the architectural approval applications for Lots within the Somers Park Series. As used within these Governing Documents, the generic term "Design Review Board" shall refer to the specific design review board vested with exclusive oversight over the Series to which the context applies. The Design Review Board may, however, delegate some of its powers or responsibilities, with respect to design review for Somers Pointe to the Association. Unless and until such time as the Design Review Board delegates all or a portion of its reserved rights to the Association, the Association shall have no jurisdiction over architectural matters. To assist with an Owner's navigation of the design review process and standards, the Design Review Board adopts the Design Review Guidelines as initially set out in Exhibit "F," which may be amended from time to time as provided in Section 1.3 to the Design Review Guidelines. ERC shall act as the Somers Park Design Review Board and Terra Verde shall act as the Somers Village, Somers Villas, and Somers Ridge Design Review Boards until the earlier of: (a) the termination of the Class "B" Control Period; or (b) the Declarant by Recorded instrument assigns oversight of the Design Review Board to the Association.

4.2 New Construction.

The Design Review Board shall have exclusive oversight of all new construction within Somers Pointe, including but not limited to those elements defined as modifications in the Design Review Guidelines. So long as Declarant owns any portion of the Properties, Declarant, by agreement with the Design Review Board, may establish a higher standard of design review for initial construction for all or a portion of Somers Pointe than that which is or was applicable to other portions of Somers Pointe. In such event, Declarant shall administer the design review standards that exceed those imposed by the Design Review Board in accordance with procedures, policies, and standards agreed upon by Declarant and the Design Review Board.

4.3 Modifications.

The Design Review Board shall have exclusive oversight of all modifications to existing construction within Somers Pointe, including but not limited to all exterior improvements, structures, and any appurtenances thereto or components thereof of every type and kind, and all landscaping features, including but not limited to buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar panels, painting or other finish materials on any visible surface, additions, walkways, sprinkler systems, garages, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, gardens, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior lighting, poles, sporting fixtures such as basketball goals, temporary sporting features such as temporary basketball goals, signs, exterior tanks, exterior air conditioning units, cooling, heating, and water softening equipment (collectively, modifications). If the Design Review Board delegates to the Association its design review authority for exterior alterations of existing improvements or planting or removal of landscaping, the Association shall establish an Architectural Review Committee. The structure, policies, procedures, and standards set forth in this Section shall apply to the Architectural

Review Committee unless the Design Review Board otherwise establishes or modifies such matters.

4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the members of the Design Review Board reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of this Declaration or the Design Review Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity on a Lot within the scope of this Article until such activities have been completed, in which case it may be necessary to require changes to the improvements involved. Approval of applications or Plans for any activities done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right of the Design Review Board to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.5 Variances.

The Design Review Board may authorize variances from compliance with the Design Review Guidelines: (a) in narrow circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or (b) when circumstances such as topography, natural obstructions, or aesthetic or environmental considerations so require, but only in accordance with duly adopted rules and regulations. A variance may be granted only when special circumstances so dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, issuance of any permit, or the terms of any financing shall not constitute hardships.

4.6 Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Somers Pointe; they do not create any duty to any Person. Review and approval of any application pursuant to this Article are made on the basis of aesthetic considerations only, and the Design Review Board shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements; or (iii) conformity of quality, value, size or design among Lots.

Declarant, the Design Review Board, the Association, the Board, and any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage or other general site work, or for any defects in plans revised or approved hereunder, or for any injury, damages, or loss arising out of the manner or quality of approved construction on or

modifications to any Lot. In all matters, the Design Review Board shall be defended and indemnified by the Association as provided in Section 7.6 of this Declaration.

4.7 Certificate of Compliance.

Any Owner may request that the Reviewer issue a Certificate of Architectural Compliance certifying that there are no known violations of this Declaration. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such Certificate of Architectural Compliance. Issuance of a Certificate of Architectural Compliance shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of the Certificate of Architectural Compliance.

4.8 Fees; Assistance.

The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant, the Design Review Board and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.9 Declarant and Design Review Board Addresses.

For purposes of this Article 4, Owners or, as applicable, Builders shall submit applications to the following applicable addresses in the following forms:

Somers Park Series Design Review Board

Attn: Architectural Application
1000 West Wilshire Avenue, Suite 308
Oklahoma City, Oklahoma 73116

Somers Village, Somers Ridge, Somers Villas Design Review Boards

Attn: Architectural Application
1320 N. Porter
Norman, Oklahoma 73071

Any change in the above notice addresses shall be given through a filing in the real property records of Canadian County, State of Oklahoma designated a "Change of Address for Design Applications" providing both the entity and new address for submission of applications.

