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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WINTERHAVEN ESTATES

STATE OF TEXAS                    3  
  3        **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF DALLAS               3

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINTERHAVEN ESTATES** (this "Declaration"), is made on the date hereinafter set forth by **WINTERHAVEN ESTATES, LP.**, a Texas limited partnership, for the purpose of evidencing the covenants, conditions and restrictions contained herein.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of that certain real property described in *Exhibit A* and known as **Winterhaven Estates** (the "Development" or "Property"). Any recorded plat or recorded subdivision map on the Development, is referred to as the "Plat".

**WHEREAS**, Declarant has deemed it desirable for the enforcement of the Declaration and the efficient preservation of the amenities in the Development, to create an Association (hereinafter defined) to which shall be delegated and assigned the power of administering and enforcing these assessments, conditions, covenants, easements, reservations and restrictions, including levying, collecting and disbursing the assessments.

**WHEREAS**, there has been or will be incorporated, one or more non-profit corporations created under the laws of the State of Texas, including the first being the **Homeowners' Association of Winterhaven Estates**, whose directors will establish Bylaws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid. No more than one such non-profit corporation shall be in existence at any one time.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following assessments, conditions, covenants, easements, reservations and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These assessments, conditions, covenants, easements, reservations and restrictions shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of Declarant and each owner thereof.

**ARTICLE I**

**ADDITIONAL DEFINITIONS**

**1.1     Association.** "Association" shall mean and refer to **Homeowners' Association of Winterhaven Estates**, its successors, assigns or replacements which has jurisdiction over all properties located within the Property encumbered under this Declaration, as same may be amended.

**1.2     Areas of Common Responsibility.** "Areas of Common Responsibility" shall mean those areas listed below which the Association shall maintain, upkeep and repair:

- a) All common areas owned by the Association.
- b) All landscaping located upon Areas of Common Responsibility.
- c) All irrigation and lighting systems servicing the Areas of Common Responsibility.
- d) Any building or structure to be constructed within the Areas of Common Responsibility.
- e) Any area that is designated as an area "to be maintained by the HOA" on the Plat.
- f) Any public area adjacent to the Development in cases where it may be deemed to be in the best interest of the Association.
- g) The area between the curb and the masonry wall along Wintergreen Road.
- h) All entry features located on the Property.
- i) All perimeter fences and walls located on the Property.

**THE NATURAL SCREENING ALONG THE EAST PROPERTY LINE SHALL REMAIN UNTOUCHED.**

**1.3 Builder.** "Builder" shall mean any homebuilder (which for purposes hereof shall be defined as any entity or person regularly engaged in the business of constructing single-family residences for the purpose of sale to third parties) owning Lots in the Development.

**1.4 Common Area.** "Common Area" shall mean any portions described or depicted on the Plat as common areas; and any other portions of the Property as described or depicted on the Plat that do not constitute Lots, streets, roads, alleys or park sites or park lots.

**1.5 Declarant.** "Declarant" shall mean **Winterhaven Estates, LP.**, and any party to whom it shall expressly assign in writing, its rights, powers, privileges and prerogatives as the Declarant hereunder.

**1.6 City.** "City" shall mean the City of Cedar Hill.

**1.7 County.** "County" shall mean Dallas County, Texas.

**1.8 Home.** "Home" shall mean a single-family residential dwelling unit constructed on a Lot being a part of the Property, including the parking garage utilized in connection therewith and the Lot upon which the Home is located.

**1.9 Lienholder.** "Lienholder" or "Mortgagee" shall mean the holder of a first mortgage lien on any Home or Lot.

**1.10 Lot.** "Lot" or "Lots" shall mean and refer to the individual platted building lots depicted on the Plat of the Property, excluding open space, streets, alleys, and any Common Area or Areas of Common Responsibility. Where the context requires or indicates, the term Lot shall include the Home and all other improvements which are or will be constructed on the Lot.

**1.11 Member.** "Member" shall mean and refer to every person or entity who is a Class "A" Member or Class "B" Member of the Association as defined in Section 3.2 hereof. Declarant and each Owner shall be a Member in the Association.

**1.12 Owner.** "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot and shall include Declarant and any Builder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is a part of the Property, through deed in lieu of foreclosure or through judicial or nonjudicial foreclosure.

**1.13 Vehicle.** "Vehicle" shall mean any vehicle or equipment or machinery of any kind or type whatsoever, including any automobile, truck, sport utility vehicle, motorcycle, boat, jet ski or any similar type marine craft, mobile home, motor home, aircraft, boat trailer or any other kind of trailer.

## ARTICLE II

### PROPERTY RIGHTS

**2.1 Maintenance of Areas of Common Responsibility by the Association.** The Association will be solely obligated to maintain and improve the Areas of Common Responsibility in a prudent manner to enhance the safety, security and overall appearance of the Development. As such, the Association shall not, except as the Association may reasonably deem appropriate to comply with applicable laws or to protect the health, safety or welfare of the Development or the Members, (i) cause any buildings or permanent structures to be constructed within the Areas of Common Responsibility other than as contemplated in this Declaration that would materially interfere with the use or enjoyment of such areas by all of the Members, or (ii) allow any material interference or conflict with the natural or planted vegetation or trees in the Areas of Common Responsibility. The Association shall have the following rights with regard to the Areas of Common Responsibility:

(i) the right to dedicate or transfer all or any part of the Areas of Common Responsibility to any public agency or authority subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless (a) an instrument of agreement to such dedication or transfer, signed by the Association after receiving the approval of two-thirds (2/3) of the outstanding votes of each class of Members entitled to vote (determined pursuant to Section 3.2 hereof), is properly recorded in the Real Property Records of the County, (b) a written notice of proposed action under this Section is sent to every Owner (including Lienholder or Mortgagees) not less than thirty (30) days, nor more than sixty (60) days in advance of said action, with cost of mailing to be charged to the association, and (c) the City consents in writing to the dedication or transfer;

(ii) the right to borrow money to be secured by a lien against the Areas of Common Responsibility; however, the rights under such improvement mortgage shall be subordinate and inferior to the rights of the Owners hereunder;

(iii) the right to make rules and regulations relating to the use of the Areas of Common Responsibility, including "fee-for-use" provisions or similar provisions for the use of any amenity center or recreation facility such as any swimming pool or recreational playing fields; and

(iv) the right to entry upon the Areas of Common Responsibility and any access, maintenance or other easements on the Property for the purposes of maintaining or improving the Areas of Common Responsibility.

**2.2 Title to Areas of Common Responsibility.** After the recordation of this Declaration Declarant may, in Declarant's sole option, convey to the Association, without consideration, all right, title and interest of Declarant in and to the Areas of Common Responsibility owned by Declarant. Nothing contained herein shall create an obligation on the part of Declarant to establish any additional common areas or Areas of Common Responsibility.

## ARTICLE III

### ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

**3.1 Membership.** Declarant, during the time it owns any Lots, and each person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. Transfer of ownership, either voluntarily or by operation of law, shall terminate such Owner's membership in the Association, and membership shall be vested in the transferee; provided, however, that no such transfer shall relieve or release such Owner from any personal obligation with respect to assessments which have accrued prior to such transfer.

**3.2 Voting Rights.** The Association shall have two classes of voting membership.

(a) **Class "A".** The Class "A" Members shall be all Owners except Declarant so long as Declarant is a Class "B" Member pursuant to Section 3.2.(b) below. The Class "A" Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class "B".** The Class "B" Member shall be Declarant. Declarant shall be entitled to ten (10) votes for each Lot owned; provided however that Declarant shall cease to be a Class "B" Member and shall become a Class "A" Member entitled to one (1) vote per Lot on the happening of the earlier of the following events:

- (i) when the total votes entitled to be cast of the Class "A" Members equals the total votes entitled to be cast of in the Class "B" Members, or
- (ii) the expiration of ten (10) years from the recording date of this instrument in the Real Property Records of the County, or
- (iii) when the Declarant, in its sole discretion, so determines.

Notwithstanding the foregoing, Class "B" membership shall be reinstated at any time before the expiration of twenty (20) years from the recording date of this instrument in the Real Property Records of the County if additional Lots owned by Declarant are added or annexed to the scheme of this Declaration in sufficient numbers to restore the ratio of Lots owned by Declarant to the number required for Class "B" membership pursuant to this Section 3.2.

In consideration of Declarant's deficit funding of the Association, if any, upon the occurrence of any of the following events: (i) conversion of Declarant's Class B membership status to Class A membership status; (ii) assignment of Declarant's rights hereunder pursuant to Section 7.25, then and in such event Declarant shall be fully released, relieved and forever discharged from any further duty or obligation to the Association or any of its Members as Declarant by reason of the terms and conditions of this Declaration including any amendments thereof or supplements thereto, save and except the duties and obligations, if any, of Declarant as a Class A Member by reason of Declarant's continued ownership of one or more Lots, but not otherwise. Further, and without regard to whether or not Declarant has been released from obligations and duties to the Association, so long as Declarant holds record title to at least one (1) Lot and holds same for sale in the ordinary course of business, neither the Association nor its Board, nor any Member of the Association shall take any action that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment, including but not limited to, any direct or indirect interference with the sale of Lots. In the event there is a breach of this Section, it is acknowledged that any monetary award which may be available would be an insufficient remedy and therefore, in addition to all other remedies, the Declarant shall be entitled to injunctive relief restraining the Association, its Board or any Member of the Association from further breach of this Section.

**3.3 No Cumulative Voting; Eligibility to Vote.** At all meetings of the Association, there shall be no cumulative voting. Prior to all meetings, the Board of Directors of the Association (the "Board of Directors", or the "Board") shall determine the total number of votes outstanding and entitled to vote by the Members. Eligibility to vote or serve as a representative, director or officer of the Association shall be predicated upon being a Member who must be in good standing with the Association. To be in good standing, the Member must have all assessments of every type and category paid up to date and have no outstanding financial obligations to the Association that are delinquent. Additionally, no Member shall be allowed to vote or hold office if that Member is noted within the records of the Association to have a current violation of this Declaration on one or more Lots in the Development.

**3.4 Association's Powers.** In addition to the rights of the Association set forth in other sections of this Declaration, the Association shall have the duty to enforce the covenants, conditions and restrictions under this Declaration and maintain all Areas of Common Responsibility and shall have the right, power, and authority to do any act which is consistent with or required by the provisions of this Declaration or the Bylaws of the Association (the "Bylaws"), whether the same be expressed or implied, including but not limited to the following:

- (a) The power to levy and collect Assessments (as hereinafter defined), of whatever nature for the maintenance, repair or replacement of the Areas of Common Responsibility and for such other purposes as are herein provided;
- (b) The power to keep accounting records with respect to the Association's activities ;
- (c) The power to contract with and employ others for maintenance and repair; and
- (d) The power to adopt rules and regulations concerning the operation of the Association including "fee-for-use" provisions or similar provisions for the use of any amenity center or recreation facility such as any swimming pool or recreational playing fields.

**3.5 Notice and Quorum for any Action Authorized Under This Declaration.** Written notice of any meeting called for the purpose of taking any action authorized under this Declaration shall be given to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting. At such meeting, the presence of Members or of written proxies entitled to cast twenty-five percent (25%) of all the votes entitled to be cast by Members of the Association entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

**3.6 City's Rights.** Should Declarant, the Association or its Board fail or refuse to maintain such Areas of Common Responsibility to City specifications for an unreasonable time, not to exceed ninety (90) days after written request to do so, the City, or its lawful agent, shall have the same right, power and authority as is herein given to the Association and its Board to enforce this Declaration and levy Assessments in the manner set forth herein; and to avail itself of any other enforcement actions available to the City pursuant to State law or City codes or regulations. It is understood that in such event, the City may elect to exercise the rights and powers of the Association or its Board, to the extent necessary to take any action required and levy any Assessment that the Association might have, either in the name of the Association, or otherwise, to cover the cost of maintenance of such Areas of Common Responsibility. Furthermore, the City or its lawful agents, after due notice to the Homeowners' Association, shall have right and ability to remove any landscape systems, features or elements that cease to be maintained by the Homeowners' Association. Excepting the City's gross negligence or willful misconduct, the Homeowners' Association shall indemnify the City and hold its harmless from costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Homeowners' Association or from City's performance of the maintenance or supervision responsibilities of the Homeowners' Association due to the Homeowners' Association's failure to perform said responsibilities. Notwithstanding the foregoing, the City may, but need not exercise any of the rights or remedies conferred herein, and the provisions of this Section shall not be construed in any way to affect the City's authority to enforce any applicable federal,

federal, state or local law, ordinance or regulation.

**3.7      Activation.** No later than at which time seventy percent (70%) of the Lots have been transferred to an individual other than the Declarant or a homebuilder; a meeting will be held to inform the members that their voting rights have been activated

**3.8      Amenities.** Notwithstanding anything set forth in this Declaration to the contrary, the Association may in its discretion permit parties other than Owners or parties living in the Development to have access to and use and enjoy any amenity center or recreational facility constructed in the Common Area, such as any swimming pool or recreational playing fields, upon such terms and conditions reasonably established by the Association, including establishing a "fee-for-use" or similar charges.

**3.9      Dissolution.** The Homeowners' Association may not be dissolved without the prior written consent of the City.

## ARTICLE IV

### ASSESSMENTS, MAINTENANCE FUND AND ASSESSMENT LIENS

**4.1      Creation of the Lien and Personal Obligation of Assessments.** Subject to the terms hereof, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) regular assessments or charges (ii) charges in connection with the transfer of a Lot, (iii) special assessments, and (iv) other individual assessments levied against an individual Owner pursuant to the provisions of this Declaration (collectively, the "Assessments"). Such Assessments are to be fixed, established and collected as provided herein. Assessments, together with such interest thereon, costs of collection thereof, and costs of enforcement of this Declaration, as hereinafter provided, shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest costs and reasonable attorney's fees for the collection thereof, shall also constitute a personal obligation of the person or entity who was the record Owner of such Lot at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by such successors; however, the lien upon the Lot shall continue until paid.

**4.2      Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Lots, the improvement and maintenance of the Areas of Common Responsibility and any other property owned by the Association, and the performance and/or exercise of the rights and obligations of the Association arising hereunder. Assessments shall include, but not be limited to, funds to cover actual Association costs (including reasonable reserves) for all taxes, insurance, repair, replacement, maintenance and other activities as may from time to time be authorized by the Board of Directors; legal and accounting fees, and any fees for management services; expenses incurred in complying with any laws, ordinances or governmental requirements applicable to the Association or the Property; reasonable replacement and other reserves; and the cost of other facilities and service activities, including, but not limited to, mowing grass, grounds care, sprinkler system, landscaping, and other charges required or contemplated by this Declaration and/or that which the Board of Directors shall determine to be necessary or prudent to meet the primary purpose of the Association, including the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein.

**4.3 Basis and Maximum of Regular Assessments Transfer Fees and Working Capital Contributions on the Sale of Lots.**

(a) The initial regular Assessment shall be an amount determined by the Board of Directors not to exceed Eighty Eight Dollars (\$88.00) per quarter calendar year or Three Hundred Fifty                      Dollars (\$350) per annum for each Lot.

(b) From and after January 1 of the first full year after the date of recordation of this Declaration and each year thereafter, the maximum regular assessment may be increased by the Board of Directors by an amount up to ten percent (10%) over the preceding year's regular assessment. Any increase over and above ten percent (10%) of the previous year's regular assessment shall be done only by the prior approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes of each class of Members entitled to vote (determined pursuant to Section 3.2 hereof) present at a meeting at which a quorum is present.

(c) In addition to the regular assessment, as a condition to the sale of every Lot by an Owner other than Declarant in the Development, a transfer fee of One Hundred Dollars (\$100.00) shall be charged to the seller of such Lot being conveyed, and a transfer fee of One Hundred Dollars (\$100.00) shall be charged to the purchaser of the Lot being conveyed and the pro-rata share of the regular assessments then due on such Lot shall be paid by the purchaser of the Lot to the Association.

(d) Upon acquisition of record title to a Lot by the first Owner other than Declarant or a Builder, a contribution shall be made by or on behalf of such first Owner to the working capital of the Association in an amount equal to Three Hundred Fifty Dollars (\$350.00). This amount is not refundable, shall be in addition to, not in lieu of, the regular assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into escrow and disbursed therefrom to the Association or to the Declarant if the Association is not yet established and shall be used for covering operating and other expenses incurred by the Association pursuant to the terms of this Declaration and the bylaws of the Association. The working capital contribution shall be charged until the earliest to occur of the following events: (i) the expiration of five (5) years following the recordation of this Declaration; or (ii) one (1) year after the date that the Declarant no longer owns any Lot in the Property.

**4.4 Special Assessments.** In addition to the regular Assessment, the transfer fees and capital improvement reserve fee payable on the sale of Lots authorized above, the Association may levy, in any assessment year, a Special Assessment (herein so called) applicable to that year only, for the purpose of defraying, in whole or in part, the costs incurred by the Association pursuant to the provisions of this Declaration, provided that any such Special Assessment shall have the prior approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes of each class of Members entitled to vote (determined pursuant to Section 3.2 hereof) present at a meeting at which a quorum is present. Any Special Assessments shall be prorated based on the period of time the Owner owns the Lot during such year.

**4.5 Uniform Rate of Assessment.** Both the regular and Special Assessments shall be fixed at a uniform rate for all Lots, and shall commence and be due in accordance with the provisions of Section 4.7 hereof. Each Owner, (other than Declarant who may pay the deficiency described below), shall pay one hundred percent (100%) of such Owner's Assessments for each Lot owned.

**4.6 Individual Special Assessments.** The Board of Directors shall have the power to levy individual special assessments against a particular Lot or Lots constituting less than all Lots within the Property as follows:

(a) To cover the costs, including overhead and administrative costs, of providing benefits, items or services to any Lot upon request of the Owner, which benefits, items or services the Board of Directors may (but shall not be obligated to) offer from time to time; such assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred;

(b) To cover costs incurred in bringing the Lot into compliance with the terms of this Declaration, the Bylaws or the Articles of Incorporation, or costs incurred as a consequence of the conduct of the Owner of the Lot, their tenants, licensees, invitees or guests.

(c) For fines levied pursuant to this Declaration or the Bylaws; and

(d) For any other costs or expenses specifically authorized by this Declaration, the Bylaws or the Articles of Incorporation to be levied against a particular Lot or Lots.

Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

#### **4.7 Date of Commencement of Regular Assessments; Due Dates.**

(a) The obligation of Owners to pay regular assessments provided for herein shall commence as to each Lot upon its conveyance by Declarant to any person or entity that is not affiliated with Declarant, respectively. The Assessments shall then be due on such payment dates as may be established by the Board of Directors. Assessments shall be due and payable on an annual basis unless otherwise designated by the Board of Directors.

(b) Declarant is not required to pay Assessments with respect to the Lots owned by Declarant. Builder exemption (if any) to pay Assessments with respect to the Lots owned by Builder shall be under separate agreement between Declarant and Builder. Declarant and/or Builder may, but shall have no obligation to, pay any deficiency resulting from the expenses of the Association exceeding the amount of the Assessments received from the Owners. Declarant may, but is not obligated to, lend funds to the Association to enable it to defray its expenses, provided the terms of such loans are on reasonable market conditions at the time.

(c) Unless provided above, the regular Assessments for the first Assessment year shall be fixed by the Board of Directors prior to the sale of the first Lot to an Owner other than Declarant or a Builder. Except for the first Assessment year, the Board of Directors shall fix the amount of the regular Assessment at least thirty days in advance of each Assessment year, which shall be the calendar year; provided, however, that the Board of Directors shall have the right to adjust the regular Assessment upon thirty days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted pursuant to Section 4.3 hereof. Written notice of the regular Assessment shall be given as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed either by the President, Vice President, Treasurer or other authorized representative of the Association setting forth whether the regular and Special Assessments on a specified Lot have been paid and the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

(d) No Owner may exempt himself from liability for Assessments by waiver of the use or enjoyment of any portion of the Development or Areas of Common Responsibility or by abandonment of his Home or any Lot or improvements thereon.

#### **4.8 Effect of Non-Payment of Assessments; Remedies of the Association.**

(a) All payments of the Assessments shall be made to the Association at its principal place of business or at such other place as the Association may otherwise direct or permit. Payment shall be made in full regardless of whether any Owner has any dispute with Declarant, a Builder, the Association, any other Owner or any other person or entity regarding any matter to which this Declaration relates or pertains. Payment of the Assessments shall be both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Lot.



(b) Any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the date of delinquency, the Assessment shall bear interest from the date of delinquency (with no notice required to be given), until paid, at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law, whichever is the lesser. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or, upon compliance with the notice provisions hereof, foreclose the lien against the Lot as provided in Subsection 4.8(d) hereof. If any Owner is delinquent in paying its Assessments, then in addition to the other rights and powers granted herein, the Board of Directors may impose a late charge not to exceed One Hundred and No/100 Dollars (\$100.00) per month for each such delinquent payment. There shall be added to and included in the amount of such Assessment any and all expenses or costs incurred by the Association in collecting any delinquent Assessment and foreclosing such lien, including said interest, fines, and reasonable attorneys' fees. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such lien against such Owner. Under no circumstances, however, shall Declarant or the Association be liable to any Owner or to any other person or entity for failure or inability to enforce any Assessments.

(c) No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided in less than thirty (30) days after the date a notice of claim of lien is deposited with the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of the County; said notice of claim must recite a good and sufficient legal description of the Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment at the rate set forth herein, plus attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association.

(d) Any such sale provided for above is to be conducted in accordance with the provisions applicable to the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Property Code of the State of Texas (as it may be amended from time to time), or in any other manner permitted by law. Each Owner, by accepting a deed to a Lot, expressly grants to the Association a power of sale as set forth in said Section 51.002 of the Property Code, in connection with the Assessment lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

(e) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association but not to exceed the actual cost of preparing and filing or recording the lien and the release. The Assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right of suit to recover a money judgment for unpaid Assessments, as above provided.

(f) In addition to the other rights and powers granted herein, the Board of Directors may suspend the right of an Owner to use any of the Areas of Common Responsibility during the period such Owner is delinquent in paying any Assessments. No Owner shall have the right to vote as a Member of the Association during the period that such Owner is delinquent in paying any Assessments. The Board of Directors may require that any delinquent Assessments be paid by cashiers or certified check or other good funds acceptable to the Board of Directors.

**4.9 Subordination of Lien to Lienholders.** The lien securing the Assessments provided for herein shall be expressly subordinate to the lien of any Lienholder. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot subject to a Lienholder mortgage pursuant to a decree of foreclosure or a non-judicial foreclosure under such Lienholder mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due, in accordance with the terms herein provided.

**4.10 Management Agreements.** The Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the Development and the performance of its obligations hereunder. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled with or without cause and without penalty by either party with thirty (30) days written notice. Any and all management agreements shall be for a term not to exceed one year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Association may, at its discretion, assume self management of the Development by the Association.

**4.11 Insurance Requirements.** The Association shall obtain insurance policies covering the Areas of Common Responsibility and covering all damage or injury caused by the negligence of the Association, and any of its employees, officers, directors and/or agents, and such insurance may include commercial general liability insurance, directors and officers liability insurance, and such other insurance as the Association may from time to time deem necessary or appropriate.

## **ARTICLE V**

### **ARCHITECTURAL REVIEW COMMITTEE**

**5.1 Appointment of Members.** An Architectural Control Committee (the "Committee"), which shall consist of three (3) members who shall be natural persons and who may or may not be employed by Declarant shall initially be appointed by Declarant. All matters before the Committee shall be decided by majority vote of its members. The members of the Committee shall serve until they resign or are removed by the party appointing them to the Committee (which the appointing party may do at any time). Subsequent appointments to the Committee shall be made by Declarant until such time as Declarant either relinquishes such power by written notice to the Board of Directors or all of the Lots owned by Declarant (as the same may be added or annexed to this Declaration) have been sold by Declarant; thereafter, appointments and removals from the Committee shall be made by the Board of Directors for such term as they shall designate. The Board of Directors shall have the right to review any action or non-action taken by the Committee and shall be the final authority.

**5.2 Submission of Plans to Architectural Control Committee.** No Home, building, fence, wall, parking area, hardscape, swimming pool, spa, pole, driveway, fountain, landscaping, out-building, sprinkler system, exterior color or shape, or other improvement of any kind or type, or any alteration, addition to, change or modification of any of the foregoing, shall be constructed, erected or maintained upon any Lot or the patio or garage used in connection with any Lot after such Lot has been sold by Declarant until the plans and specifications showing the nature, kind, color, shape, height, materials and location of the same are submitted to and approved in writing by the Committee. Plans and specifications shall be submitted to the Committee at least fourteen (14) days prior to the commencement of any such construction or modification. Two (2) copies of the following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, and floor plan and elevations of all faces of the proposed structure, a description of all exterior construction materials and such other materials, including engineering plans, if necessary, as the Committee shall reasonably require in order to enable the Committee to fully evaluate the proposed construction or modification. A copy of the above described plans and specifications may be retained by the Committee.

**5.3 Approval of Plans.** The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications in writing within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The Committee shall not have unbridled discretion with respect to taste, design and the standards set forth herein, but shall use commercially reasonable efforts to promote and ensure a high level of taste, design quality, aesthetic harmony, and conformity throughout the Property, consistent with standards established by this Declaration. Subject to rights of the Board of Directors set forth above, the judgment of the Committee in this respect shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. No

construction, alteration, change or modification shall commence until approval of the Committee is obtained. The Committee, subject to the rights of the Board of Directors as set forth above, may approve any reasonable deviation from Sections 6.9, 6.10, 6.12, 6.13, 6.14 and 6.15 of this Declaration as the Committee, in its sole and absolute discretion, deems consistent with the purpose hereof. No member of the Committee shall be liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Any approval of a deviation from these covenants and restrictions will be valid only if such approval is set forth in a written instrument in recordable form executed and acknowledged by a majority of the members of the Committee at the time such deviation is approved. No deviation from these covenants and restrictions shall be granted or inferred by reason of the approval or deemed approval of plans and specifications submitted to the Committee for approval that do not conform to the provisions of this Declaration. The Committee shall have the authority hereunder to require any Owner or Owner's agents or contractors to cease and desist in constructing or altering any improvements on any Property, where such actions have not first been reviewed and approved by the Committee as required hereunder or constitute a violation of this Declaration, the Design Guidelines or any other documents promulgated by the Committee. The violating Owner shall remove such violating improvements or site work at its sole expense and without delay, returning same to its original condition or bringing the Lot into compliance with this Declaration, Design Guidelines, Committee documents, and any plans and specifications approved by the Committee for construction on that Lot. If an Owner proceeds with construction that is not approved by the Committee, or that is a variance of the approved plans, the Association may assess fines as provided in Section 7.8 hereof and may continue to assess such fines until Committee approval is granted or the violation is removed. This Declaration is notice of such liability for violation and Owners hereby agree to bear the cost and expense to cure any violations according to this provision, regardless of the substantial cost, time or loss of business involved.

**5.4 Committee Members' Liability.** Neither Declarant, the Association, the Board of Directors, the Committee nor any employees, officers, directors or members thereof shall be liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications. Any errors in or omissions from the plans or the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, City codes, state statutes or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

**5.5 Builder Plans.** Notwithstanding anything to the contrary contained herein, once a particular set of plans and specifications for a Home to be constructed in the Development submitted by a Builder has been approved by the Committee or deemed approved, such Builder may construct Homes in the Development on any Lot in accordance with such plans and specifications without the necessity of obtaining subsequent approvals therefor, so long as there are no major material changes in the plans and specifications and the Committee approves of the location of the Homes to be constructed using such plans and specifications, such approval not to be unreasonably withheld or delayed.

**5.6 Design Guidelines.** The Committee has the right to issue and amend Design Guidelines from time to time which may contain the specific provisions applicable to all of the Lots regarding style, basic site design issues, aesthetics of each home, the use of quality exterior finish materials, minimum landscaping plans for the Lots, and other issues concerning building standards, permitted construction or modification, and the Committee's operation. The Design Guidelines, together with this Declaration, will be used by the Committee to determine the approval of all plans. The Design Guidelines may be responsive to future technological advances or general changes in architectural designs and materials and related conditions. The Design Guidelines may be amended without prior notice to the Owners.

**5.7 Pertaining to the Committee.** Written notice may be delivered by the Committee to Owner or any agent or contractor with apparent authority to accept same and notice shall be binding on Owner as if actually delivered to Owner. The Committee or its agents or assigns shall have the right, but not the obligation, to enter the Property to determine if violations of this Declaration, the Design Guidelines, or any other documents promulgated by the Committee

Committee exist. In so doing, the Committee shall not be subject to any liability for trespass, other tort or damages in connection with or arising from such entry nor in any way shall the Association or its agents be liable for any accounting or other claim for such action. The Committee shall have the right to set time constraints for both the commencement and completion of construction, for parties other than Declarant and a Builder, which constraints shall be no less than ninety (90) days [after which date a new approval must be obtained] from approval of the plans to commence construction and nine (9) months from the commencement date to complete construction. The Committee has the right to charge a reasonable review fee, to be established by the Board of Directors, for review of any plans or specifications submitted for approval to the Committee.

## ARTICLE VI

### CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

**6.1 Residential Use.** Each Lot on the Property shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family residence per Lot, which residence may not exceed two and one-half (2½) stories in height, a private garage as provided below, and one (1) in-the-ground swimming pool and appurtenant sidewalks, driveways, curbs, fences, and storage and equipment buildings not otherwise prohibited hereby.

**6.2 Single Family Use.** No Home shall be occupied by more than a single nuclear family. For purposes of this Declaration, a single nuclear family shall be defined as any number of persons related within the second degree of consanguinity or affinity, living with not more than one (1) person who is not so related as a single household unit. It is not the intent of the Declarant to exclude from a Home any individual who is expressly authorized or required to so remain by any state or federal law.

**6.3 Garage.** Each Home shall have an enclosed garage suitable for parking a minimum of two standard size automobiles. All garages shall be of carriage style doors made of aluminum. All garage doors, whether overhead or otherwise, and any windows in a garage door, if applicable, shall remain fully closed at all reasonably practical times. No garage or other out-building shall be converted into a dwelling or living area by any Owner.

**6.4 Restrictions on Resubdivision.** No Lot shall be subdivided into smaller lots.

**6.5 Driveways.** All driveways shall conform to applicable City and other governmental specifications and requirements.

**6.6 Uses Specifically Prohibited.**

(a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment which may be placed on a Lot only in places which are not visible from any street on which the Lot fronts) shall be permitted on any Lot except that a Builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a specifically permitted Lot during construction of residences in the Development. No building material of any kind or character shall be placed or stored upon the Property until construction is ready to commence, and then such material shall be placed totally within the property lines of the Lot upon which the improvements are to be erected; provided, however, that during any construction period, a Builder may store building materials on any Lot owned by such Builder.

(b) All Vehicles shall be parked, stored or placed so as not to be visible from any street or from ground level view from an adjoining Lot, except for temporary parking in the driveway constructed on a Lot. On-street parking shall be limited to temporary parking of guests or invitees during parties, delivery of products or services, and similar limited (no more than twelve (12) hours) time periods. No Vehicle shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any Vehicle temporarily parked while in use for the construction,

maintenance or repair of a residence in the Development. All work on Vehicles (other than routine maintenance completed within twelve (12) hours) shall be performed only in a fully enclosed garage completely screened from public view.

(c) Trucks with tonnage in excess of one and one-half (1 ½ ) tons and any commercial Vehicle with signage or advertisement displays shall not be permitted to repetitively park overnight on the streets, driveways, or other areas of the Property, except those used by a Builder or its contractors during the construction of improvements.

(d) No Vehicle of any size that transports flammable or explosive cargo may be parked, stored or kept on the Property at any time.

(e) No Vehicle that is not in operating condition, does not have current license plates and inspection stickers, and/or is not in current use shall be parked or stored on the Property unless such Vehicle is parked or stored in a fully enclosed garage completely screened from public view.

(f) No garage, garage house, out-building, or structure of a temporary character, such as a trailer, tent, shack, barn, underground tank or structure shall be used or occupied on the Property by any Owner, tenant or other person at any time as a dwelling or living area; provided, however, that any Builder may maintain and occupy model houses, sales offices and construction trailers in the Development in connection with its activities of constructing residences in the Development.

(g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in or on the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Property. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Property.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats or other regular household pets may be kept as household pets. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the Property so that no person shall quarter on the Property cows, horses, pigs, bees, hogs, sheep, goats, guinea fowl, ducks, chickens, turkeys, skunks or any other animals that may interfere with the peace and quiet and health and safety of the community. No more than four (4) household pets will be permitted to reside in each Home. Pets must be restrained or confined to the homeowner's rear yard within a secure fenced area or within the Home. It is the pet owner's responsibility to keep the Lot clean and free of pet debris or odor noxious to adjoining Lots. All animals must be properly registered and tagged for identification in accordance with local ordinances.

(i) No Lot or other area of the Property shall be used as a dumping ground for rubbish or waste, or for the storage or accumulation of unsightly materials of any kind, including without limitation, broken or rusty equipment, disassembled or inoperative Vehicles and discarded appliances and furniture. Trash, garbage or other waste shall at all times be kept in clean, well maintained sanitary containers. All trash containers shall at all times be screened from view from adjoining Lots and streets except as is reasonably necessary for trash pickup. Materials incident to construction of improvements may only be stored on Lots during construction of the improvement thereon.

(j) No individual or private water supply system shall be permitted on any Lot.

(k) No individual or private sewage disposal system shall be permitted on any Lot.

(l) All air-conditioning apparatus, including window units, shall be installed so as not to be visible from any street in front of a Home. No air-conditioning apparatus or evaporative coolers shall be attached to any front wall or window of a Home.

(m) The Declarant and/or the Association shall have the right, without obligation, to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Property. No satellite dishes shall be permitted which are larger than

than one (1) meter in diameter. No broadcast antenna mast may exceed the height of the center ridge of the roofline. No Multichannel Multipoint Distribution Service ("MMDS") antenna mast may exceed the height of twelve feet (12') above the center ridge of the roofline. No exterior antennas, aerials, satellite dishes, or other apparatus shall be permitted which transmit television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property. The Declarant by promulgating this provision is not attempting to violate the Telecommunications Act of 1996 (the "Telecommunications Act"), as same may be amended from time to time. This subsection shall be interpreted to be as restrictive as possible while not violating the Telecommunications Act.

(n) No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on the exterior of a Home, unless required by federal, state or local regulation or unless operated so that the devices cannot be heard from any adjoining Lot, street or Common Area. The use and discharge of firecrackers and other fireworks is prohibited within the Property. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of Vehicles and other mechanical devices, that might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any visible part of the Property.

(o) No fence, wall, hedge or shrub planting which obstructs sight lines at an elevation between two feet (2') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the intersection of street right-of-way lines and a line connecting them twenty feet (20') from the intersection of the street right-of-way lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any Lot within the area that is ten feet (10') from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at a minimum height of six feet (6') above the adjacent ground line.

(p) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, no building previously constructed elsewhere shall be moved onto any Lot, it being the intention that only new construction be placed and erected on the Property.

(q) Within those easements on each Lot as designated on the Plat of the Development or contained herein, no improvement, structure, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of the utilities within such easement, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water through drainage channels. The general grading, slope and drainage plan of a Lot as established by the City approved development plans may not be altered without the approval of the City and/or other appropriate agencies having authority to grant such approval.

(r) No sign of any kind or character, including (a) any signs in the nature of a "protest" or complaint against Declarant or any Builder, (b) or that describe, malign or refer to the reputation, character or building practices of Declarant or any Builder, or (c) discourage or otherwise impact or attempt to impact anyone's decision to acquire a Lot or Home in the Development, shall be displayed to the public view on any Lot or from any Home on any Lot except for (x) one professionally fabricated sign of not more than five (5) square feet advertising the property for rent or sale, (y) signs used by a Builder to advertise the property during the construction and sales period, or (z) political signs (of not more than five (5) square feet in size) advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such political signs shall not be erected more than thirty (30) days in advance of the election to which they pertain and shall be removed within ten (10) days after the election. All permitted signs shall be ground mounted to a height of not more than three feet (3'). Moreover, no Owner may use any public medium such as the "internet" or any broadcast or print medium or advertising to similarly malign or disparage the building quality or practices of any Builder, it being acknowledged by all Owners that any complaints or actions against any Builder are to be resolved in a private manner and any action that creates controversy or publicity for the Development or the quality of

Development or the quality of construction of any Home within the Development will diminish the quality and value of the Development. Declarant, any Builder, the Association, or their agents shall have the right, without notice, to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal.

(s) Outdoor drying of clothes is prohibited.

(t) Lawn mowers, rakes, carts and other yard equipment shall be stored away from view from adjacent Lots and streets when not in use.

(u) Except within fireplaces in the main residential dwelling and barbeque equipment for outdoor cooking, no burning of trash, leaves or other items or material shall be permitted anywhere on the Property.

(v) No use shall be conducted in the Development which could be violative of any deed restrictions, other encumbrances of record, zoning or planned use designation, or development or building restrictions or regulations imposed by the City or County, all as such may be applicable to the Development from time to time. Furthermore, no use shall be conducted which shall conflict with FHA or VA regulations (if applicable) or any regulation or ordinance of any other applicable governmental entity or agency.

(w) To protect the safety and harmony of the Development, no person shall engage in picketing on any Lot, the Property, or easement within or adjacent to the Property, nor shall any Vehicle parked, stored, kept or driven in or adjacent to the Property bear or display any signs, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the rights, occupancy or permitted activities of any Owner on the Property.

(x) No business nor business activity, whether for profit or not, shall be permitted in or on any Home or Lot, except that an Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a Home so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Home; (b) the business activity conforms to all zoning requirements and other restrictive covenants applicable to the Property; (c) the business activity does not involve visitation to the Home or Lot by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Development; and, (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board. A day-care facility, home day-care facility, church, nursery, pre-school, beauty parlor, barber shop or other similar facility is expressed prohibited. The terms "business" and "trade" as used in this provision shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis that involves the manufacture or provision of goods or services for or to other persons other than the provider's family, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does not generate a profit, or (iii) a license is required therefor. Notwithstanding the above, the leasing of the entire Home shall not be considered a trade or business within the meaning of this Section. Garage sales or yard sales (or any similar vending of merchandise) conducted on any Lot shall be not considered business activity provided that no Owner may conduct more than one garage sale or yard sale within any twelve (12) month period. The Association may, but shall not be obligated to, sponsor, organize or otherwise provide for a community wide garage sale.

**6.7 Minimum Floor Area.** The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls (but exclusive of open porches, garages, patios and detached accessory buildings), shall be not less than 2,200 square feet.

**6.8 Building Materials.** The total exterior wall area (excluding windows, doors and gables) of each Home constructed on a Lot shall not be less than the minimum percentage as established by the City by ordinance or building code requirement of brick, brick veneer, stone, stucco, stone veneer, or other masonry material permitted by City ordinance or building code.

**6.9     Setback Requirements.** No dwelling, fence, wall or other improvement shall be located on any Lot nearer to the front lot line than the minimum setback lines shown on the Plat or as required by the City. Unless a Home is initially constructed by Declarant or a Builder in a different manner, all Homes erected or placed on any Lot shall face the road or street adjacent to the front of the Lot as shown on the recorded plat of the Property.

**6.10     Fences and Walls.** All fences and walls shall be constructed only of masonry, brick, natural colored wood or other material as may be approved by the Committee. No chain link or similar type wire fences shall be allowed on any portion of a Lot that is visible from outside any boundary of the Lot. No fence or wall on any Lot shall extend nearer to any street than the front of the Home thereon. Except as otherwise specifically approved by Declarant, all streetside side yard fencing on corner Lots shall be set no closer to the abutting side street than the property line of such Lot. All fences must be six feet (6') in height. Any fence or portion thereof that faces a public street shall be constructed so that all structural members and, unless the Committee determines otherwise, support posts will be on the side of the fence away from the street and are not visible from any public right-of-way. All fences and walls shall be properly maintained in good condition by the Owner of the Lot upon which the fence or wall is situated. Rotting wood, leaning portions or those portions of a fence or wall in a state of disrepair shall be promptly repaired, maintained and/or replaced by the Owner of the Lot where upon the fence or wall is situated. No fences shall be erected in any drainage easement reflected on or established by the Plat if the fence will in any manner impair or impede the flow of drainage waters within such drainage easement.

**6.11     Sidewalks.** All walkways along public right-of-ways shall conform to the minimum property standards of the City, FHA and VA.

**6.12     Mailboxes.** Mailboxes shall be initially constructed of a material and design approved by Declarant. If gangboxes are required by the U.S. Postal Service, no individual mailboxes shall be permitted.

**6.13     Windows.** Windows, jambs and mullions shall be composed of anodized aluminum or wood. Except on a temporary basis to facilitate moving into and out of a Home, and in any event not more than thirty (30) days, no sheets, blankets, bedding, or similar material shall be placed on any window or door on any Home and in no event, shall aluminum, reflective film or similar treatment be placed on any window or glass door of any Home.

**6.14     Roof.** The entire roof of each Home shall have a pitch of at least six inches (6") of rise to every twelve inches (12") of run, unless otherwise approved by Declarant and shall otherwise comply in all respects with any applicable laws or ordinances affecting the Lot. All roofing shall be, at a minimum, 20-year shingle and shall comply with requirements of the City.

**6.15     Landscaping.** Landscaping of each Lot shall be completed within sixty (60) days, subject to extension for delays caused by inclement weather, after the Home construction is completed and shall include grassed front and side yards. At all times each Owner shall comply with all applicable landscaping and tree ordinances of the City.

**6.16     General Maintenance of Lots.** Following occupancy of the Home upon any Lot, each Owner shall maintain and care for the Home, all improvements and all trees, foliage, plants, and lawns on the Lot and otherwise keep the Lot and all improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not be limited to: (i) the replacement of worn and/or rotted components, (ii) the regular painting of all exterior surface, (iii) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the improvements to maintain an attractive appearance, and (iv) regular maintenance of all landscaping, trees and shrubs and regular mowing and edging of lawn and grass areas. Upon failure of any Owner to maintain a Lot owned by him in the manner prescribed herein, the Association or Declarant at its option and discretion, but without any obligation to do so, after ten (10) days written notice to such Owner to comply herewith, may enter, or cause a third party to enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse the Association or Declarant, as applicable, for the cost of such work together with interest thereon at the rate of eighteen percent (18%) per annum (but not in excess of the lawful maximum rate) from the date of disbursement by the



Association or Declarant, as applicable, upon demand therefore. All sums owing by an Owner to the Association or Declarant, as applicable, shall be subject to the collection procedures and be secured by the lien provided for in Article IV.

**6.17 Development and Construction Activity.** Notwithstanding any other provision in this Declaration to the contrary, Declarant and any Builder shall be permitted to conduct on the Property all activities and operations normally associated with and convenient to the development, construction, and sale of single-family dwellings on the Property, including, without limiting the generality thereof, the construction and maintenance of model homes, sales offices, parking lots, trap fences, the erection of signs advertising the subdivision and lots or homes for sale, and placement and maintenance of temporary structures or trailers in connection with such activities.

## ARTICLE VII

### GENERAL PROVISIONS

#### **7.1 Additional Easements.**

(a) **Utility Easements.** As long as Class "B" membership shall be in effect, Declarant hereby reserves the right to grant perpetual, non-exclusive easements for the benefit of Declarant or its designees, upon, across, over, through and under any portion of the Property for the purpose of ingress, egress, installation, replacement, repair, maintenance, use and operation of all utility and service lines and service systems, public and private, including, without limitation, telephone, cable television and computer or digital signals and communications, so long as such easements do not materially adversely affect the use of the Lots. Declarant, for itself and its designees, reserves the right to retain title to any and all pipes, lines, cables or other improvements installed on or in such easements. Upon cessation of Class "B" membership, the Association shall have the right to grant the easements described herein.

(b) **Continued Maintenance Easement.** In the event that the Owner fails to maintain the Lot as required herein, or in the event of emergency, or in the event the Association requires entry upon any Lot to repair or maintain any Area of Common Responsibility, the Association shall have the right, but not the obligation, to enter upon the Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Property. Entry upon the Lot as provided herein shall not be deemed a trespass, and the Association shall not be liable for any damage so created unless such damage is caused by the Association's willful misconduct or gross negligence.

(c) **Drainage Easements.** Easements for installation and maintenance of utilities, stormwater retention/detention ponds, and/or a conservation area are reserved as may be shown on the Plat. Within these easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may hinder or change the direction of flow of drainage channels or slopes in the easements. The easement area of each Lot and all improvements contained therein shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible. As long as Declarant owns any Lot, Declarant hereby reserves for the benefit of Declarant and any Builder a blanket easement on, over and under the ground within the Property to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance and such parties shall be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein shall be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property.

(d) **Temporary Completion Easement.** All Lots shall be subject to an easement of ingress and egress for the benefit of Declarant, any Builder, their employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Lots as may be expedient or necessary for the construction, servicing and completion of Homes and landscaping upon Lots adjacent thereto, provided that such easement shall terminate twelve (12) months after the date such burdened Lot is conveyed to the Owner by Declarant or a Builder.

(e) Universal Easements. The Owner of each Lot (including Declarant so long as Declarant is the Owner of any Lot) is hereby granted an easement not to exceed two feet (2') in width from the boundary of the adjoining Lots over all adjoining Lots for the purpose of accommodating any unintentional encroachment or protrusion due to engineering or fence line errors, trees, landscaping or retaining walls located along property lines, errors in original construction or surveying, overhanging of roofs, eaves or other improvements, settlement or shifting of any building, or any other unintentional similar cause. In no event shall an easement for encroachment or protrusion be created in favor of an Owner or Owners if said encroachment or protrusion occurred due to willful misconduct of said Owner or Owners. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to each affected Lot and shall pass with each conveyance of said Lot.

(f) Screening Wall, Landscape, and Entry Feature Easements. All Lots shall be subject to a perpetual non-exclusive easement for the benefit of Declarant, the Association, any Builder and their employees, subcontractors, successors and assigns, for the purpose of (i) ingress and egress over and upon all portions of the Lots as may be expedient or necessary for the construction, installation, reconstruction, maintenance, repair, replacement, addition to, and improvement of any and all screening walls, fences, common area landscaping and entry features, together with all incidental improvements, as the same may be installed, constructed, reconstructed, improved, and added to from time-to-time by Declarant, any Builder, the Association, or any party designated by Declarant, upon, over, or across the front, side or rear yards of any of the Lots, and (ii) permanently locating, installing and maintaining any and all of such screening walls, fences, common area landscaping and entry features, together with all incidental improvements.

**7.2 Enforcement.** Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws and Articles of Incorporation. Failure by the Declarant, the Association or by any Owner to enforce any covenant, condition or restriction herein contained, or contained in the Bylaws or the Articles of Incorporation shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys fees from the nonprevailing party. Further, and with respect to any litigation brought against the Committee or the Board of Directors or any of their members or representatives arising out of any action, failure to act or performance or non-performance of duties imposed hereby by the Committee or the Board of Directors or their members or representatives, the Committee or the Board of Directors or their members or representatives so sued shall be entitled to recover their reasonable attorney's fees from the party bringing such action against it or them, unless the Committee or the Board of Directors or their members or representatives shall specifically be adjudicated liable to such claimant. To the extent that the provisions of this Declaration add new restrictions, which are not merely a clarification of the previous restrictions, then any conditions, use or activity, which existed prior to the date hereof, shall not be deemed a violation of this Declaration. Notwithstanding the foregoing, at such time as an improvement, which is not deemed a violation for the reasons set forth in the preceding sentence, requires repair or replacement, the Owner must perform such repair or replacement work such that the improvement will be in compliance with this Declaration. Moreover, the Owner of a Lot wherein a condition, use or activity exists which would be a violation of the terms hereof but for the effect of this paragraph, upon the sale of the Lot shall advise the potential purchaser of such condition, use or activity and the Committee, prior to the transfer of title, shall determine what remedial work must be undertaken by the new Owner to cure the violation. Every Owner and occupant of a Lot shall comply with this Declaration, the Bylaws and the Articles of Incorporation. The Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws and the Articles of Incorporation. Sanctions may include, without limitation, the following:

(a) Imposing reasonable monetary fines in accordance with Section 7.8 hereof, which shall constitute a lien upon the violator's Lot;

(b) Suspending an Owner's right to vote and the Owner's right to use or enjoy any Common Area for any period during which any assessment and/or fines against a Lot owned by such Owner remains unpaid.

(c) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(d) Exercising self-help, consistent with the rights and duties established by this Declaration (specifically including, but not limited to, towing of vehicles that are parked or stored in violation of this Declaration); and

(e) Levying an Individual Special Assessment pursuant to Section 4.6 hereof.

In addition to any other enforcement rights, the Association may bring suit in law or in equity, or both, to enjoin any violation or to recover monetary damages, or both. All remedies set forth in this Declaration, the Bylaws and the Articles of Incorporation shall be cumulative of any remedies available at law or in equity. If the Association prevails in any action to enforce this Declaration, the Bylaws or the Articles of Incorporation, it shall be entitled to recover all costs, including, without limitation, attorneys' fees, court costs and administrative or management fees reasonably incurred in such action. Failure by the Association to enforce any of the foregoing or any other right or remedy of the Association shall in no event be deemed a waiver of the right to do so thereafter. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws and the Articles of Incorporation. The Association may also exercise every other right or privilege reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws and the Articles of Incorporation, or by law, all rights and powers of the Association may be exercised by the Board of Directors without a vote of the Members.

**7.3 Severability.** If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the final judgment or order of a court of competent jurisdiction, such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

**7.4 Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lots), the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless by vote, of the then Owners of seventy percent (70%) of the Lots agree in writing to terminate or change this Declaration in whole or in part and such writing is recorded in the Real Property Records of the County. Anything to the contrary notwithstanding; the Homeowners' Association may not be dissolved without the prior written consent of the City.

**7.5 Amendment.**

(a) This Declaration may be amended or modified upon the express consent of at least sixty-six and two-thirds percent (66-2/3%) of the outstanding votes of each class of Members entitled to vote (determined pursuant to Section 3.2 hereof) present at a meeting at which a quorum is present; provided, however, so long as Declarant continues as a Class "B" Member, this Declaration may not be amended without first obtaining the prior written consent of Declarant as evidenced by Declarant's execution of the recorded amendment instrument. If the proposed amendment involves a modification of any of the Association's agreements, covenants or restrictions pertaining to the use, maintenance, operation and/or supervision of any Areas of Common Responsibilities, the approval of the City must also be obtained. Any and all amendments, if any, shall be recorded in the Real Property Records of the County. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration (i) without the consent or approval of any other party for so long as Declarant continues as a Class "B" Member, or (ii) without the consent or approval of any other party if such amendment is to correct technical errors, cause this Declaration to be in compliance with any and all applicable laws, rules, and regulations of any applicable governmental authority, including the FHA and VA, or clarify any provision hereof.

(b) Declarant intends that this Declaration may be amended to comply (if not in compliance) with all requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), Federal National Mortgage Association ("FNMA"), FHA and VA. Notwithstanding anything to the contrary contained herein, if this Declaration does not comply with FHLMC, FNMA, VA or FHA requirements, the Board of Directors and/or Declarant shall have the power in its discretion (on behalf of the Association and each and every Owner) to amend the terms of this Declaration or to enter into

enter into any agreement with FHLMC, FNMA, VA, and FHA, or their respective designees, reasonably required by FHLMC, FNMA, VA or FHA to allow this Declaration to comply with such requirements. Should the FHLMC, FNMA, VA or FHA subsequently delete any of their respective requirements which necessitate modification of any of the provisions of this Declaration or make any such requirements less stringent, the Board of Directors and/or Declarant, without approval of the Owners, may, upon reasonable justification, cause an amendment to this Declaration to be executed and recorded to reflect such changes.

**7.6 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.

**7.7 Remedies.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the covenants, conditions and restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that Declarant's and/or the other Owner's remedies at law for any breach of the Owners' obligations contained herein would be inadequate. Enforcement may be commenced by the Association, Declarant, the City, or any Owner against any person or persons violating or attempting to violate them, and failure by the Association, Declarant, the City, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The rights created herein are unique and enforceable by specific performance.

**7.8 Imposition of Violation Fines.**

(a) In the event that any Owner fails to cure (or fails to commence and proceed with diligence to completion) the work necessary to cure any violation of the covenants and restrictions contained herein, or fails to request a hearing before the Board of Directors, within thirty (30) days after receipt of written notice from the Board of Directors or its duly authorized agent designating the particular violation and such other matters as required by law, the Board of Directors shall have the power and authority to impose upon that Owner a reasonable fine (the "Violation Fine") not to exceed Five Hundred and No/100 Dollars (\$500.00). If, after the imposition of the Violation Fine, the violation has not been cured or the Owner has still not commenced the work necessary to cure such violation, the Board of Directors shall have the power and authority, upon ten (10) days written notice, to impose another Violation Fine which shall also not exceed Five Hundred and No/100 Dollars (\$500.00). There shall be no limit to the number or the aggregate amount of Violation Fines, which may be levied against an Owner for the same violation. The Violation Fines shall be an individual assessment as described in Article IV hereof, shall be due and payable in accordance with Article IV, and together with interest at the highest lawful rate per annum and any costs of collection, including attorney's fees, shall be a continuing lien upon the Lot against which such Violation Fine is made.

(b) Upon notification of a violation of this Declaration, the Board of Directors or its duly authorized agent will issue written notice to the Owner of such violation as provided by this Section 7.8, including a copy of this Section 7.8; provided, however, that the failure to provide a copy of this Section 7.8 shall not invalidate any fine levied hereunder.

(c) Whenever an Owner, upon curing a violation of this Declaration after receiving written notice thereof as described in (b) above, receives written notice for the second time detailing a separate violation of the same provision of this Declaration within six (6) months from the date the Owner received the first written notice, such second written notice shall also contain a copy of this Section 7.8.

(d) If a subsequent and separate violation of the same covenant by the same Owner is noted, that being the third separate violation of the same covenant within six (6) months from the date the Owner received the first written notice, then the Owner will automatically be assessed a Violation Fine in an amount not to exceed Five Hundred and No/100 Dollars (\$500.00) as provided and authorized by this Section 7.8 without the necessity of providing the Owner with the written notice requesting corrective action described in Section 7.8 (a) and (b) above.

(e) If a hearing is requested within the allotted thirty (30) day period as described in Section 7.8 (a) above, the hearing shall be held before the Board of Directors in executive session. The hearing shall be held no later than the 30th day after the date the Board of Directors receives the violator's request for a hearing. The Board of Directors or its duly authorized agent shall notify the violator of the date, time and place of the hearing no later than the 10th day before the date of the hearing. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

**7.9 Notices to Owner.** Any notice required to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly delivered forty-eight (48) hours after deposit in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, and addressed to the last known address of the person who appears as Owner in the public records at the time of such mailing.

**7.10 Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and words in the singular, shall be held to include the plural and visa versa unless the context requires otherwise.

**7.11 Formation of Association; Inspection of Documents, Books and Records.** The Association shall be formed by Declarant as a non-profit corporation in accordance with the laws of the State of Texas. Management and governance of the Association shall be implemented and/or undertaken in accordance with its Articles of Incorporation, in accordance with this Declaration, and in accordance with the Bylaws which shall be adopted by the Association following its formation. The Association shall make available copies of the Declaration, Bylaws, Articles of Incorporation, rules and regulations governing the Association as well as the books, records and financial statements of the Association for inspection by Owners or any Mortgagee during regular business hours or other reasonable times.

**7.12 Indemnity.** To the fullest extent permitted by applicable law, the Association shall indemnify, defend and hold harmless Declarant, the Board of Directors, the Committee, the officers of the Association, and each director, officer, employee and agent of Declarant, the Board of Directors and the Committee from all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including attorneys' fees) incurred by such indemnified person arising out of or in connection with such indemnified persons' acts performed in good faith pursuant to this Declaration. SUCH INDEMNITY TO INCLUDE MATTERS ARISING AS A RESULT OF THE SOLE OR CONCURRENT NEGLIGENCE OF THE INDEMNIFIED PERSON, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BUT SHALL NOT INCLUDE ACTS OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

**7.13 FHA/VA Approval Requirement.** As long as there remains any Class "B" Member and any first lien mortgage is in effect with respect to any Lot which is insured by FHA or VA, the following actions shall require prior approval of FHA or VA if such approval is required under the then applicable FHA or VA regulations: amendment of the Articles of Incorporation, Declaration or Bylaws; mortgaging or dedication of the Areas of Common Responsibility; annexation of additional properties; and dissolution of the Association.

**7.14 Failure of Declarant or Association to Perform Duties.** Should Declarant or the Association fail to carry out its duties as specified in this Declaration, the City or its lawful agents shall have the right and ability, after due notice to Declarant or the Association, to remove any landscape systems, features or elements that are the responsibility of and cease to be maintained by Declarant or the Association, as applicable; to perform the responsibilities of Declarant or the Association, as applicable, if such party fails to do so in compliance with any of the provisions of this Declaration or of any applicable City codes or regulations; to assess Declarant or the Association, as applicable, for all costs incurred by the City in performing said responsibilities if Declarant or the Association, as applicable, fails to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law or City codes and regulations. Should the City exercise its rights as specified above, the party failing to perform shall indemnify and hold harmless the City from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by Declarant or the Association, as applicable, or from the City's performance of the aforementioned operations, maintenance or

maintenance or supervision responsibilities. The obligations described in this paragraph are solely obligations of the Association (and Declarant if Declarant remains so obligated), and no other party, including without limitation, Declarant (assuming Declarant is no longer so obligated) or any Owner, shall have any liabilities or obligations in connection therewith. Notwithstanding the foregoing, the city may, but need not exercise any of the rights or remedies conferred herein, and the provisions of this Section shall not be construed in any way to affect the City's authority to enforce any applicable federal, state or local law, ordinance or regulation.

**7.15 Binding Effect.** Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the Property, it being understood that such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Development. This Declaration, when executed, shall be filed of record in the Real Property Records of the County so that each and every Owner or purchaser of any portion of the Property is on notice of the conditions, covenants, restrictions and agreements herein contained. In the event any of the Lots in the Development have been conveyed to third parties prior to the recordation of this Declaration, such Lots may be encumbered by and fully subject to all of the terms, covenants, conditions and restrictions set forth in this Declaration upon the executed consent of such third parties, which such consent shall be filed of record in the Real Property Records of the County. By the recording of a deed or other conveyance transferring all or part of an interest in the Property, subject to this Declaration, the person or entity to whom such Property or interest is conveyed shall be deemed to accept and agree to be bound by and subject to all the provisions of the declaration, the design guidelines, the articles and bylaws of the Association, including any rules or regulations adopted or promulgated by the Association, whether or not mention thereof is made in said deed.

**7.16 Recorded Plat; Other Authorities.** All dedications, limitations, restrictions and reservations that are shown on the Plat are deemed to be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by Declarant or any Owner, conveying the Lots, whether specifically referred to therein or not. If other authorities, such as the City or the County, impose more demanding, expensive, extensive or restrictive requirements than those that are set forth herein (through zoning or otherwise), the requirements of such authorities shall be complied with. Other authorities' imposition of lesser requirements than those that are set forth herein shall not supersede or diminish the requirements that are set forth herein.

(a) From time to time, Declarant reserves the right to replat the Property or to amend or modify the Plat in order to assure a harmonious and orderly development of the Property as herein provided. Declarant may exercise such rights so long as it owns any Lot and no joinder of any other Owner shall be required to give effect to such rights. Each Owner, by acceptance of a deed to any Lot, constitutes and irrevocably appoints the Declarant as its duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval to exercise the powers set forth in this Section. However, any such replatting or amendment of the Plat shall be with the purpose of efficiently and economically developing the Property for the purposes herein provided or for compliance with any applicable governmental regulation. Declarant's rights under this Section 7.16(a) shall expire at such time Declarant no longer owns a Lot.

**7.17 Additions to the Development.** Additional property may become subject to this Declaration in any of the following manners:

(a) Declarant or any entity of which Texas corporation Wildwood Development Company, Inc is the general partner ("Wildwood") may without the joinder, approval or consent of any person(s) or entity(ies) add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property, provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

(b) In the event any person or entity other than Declarant or Wildwood, desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such annexation must have the prior written consent

and approval of the majority of the outstanding votes within each voting class of the Association. Any additions made pursuant to paragraphs (a) and (b) of this Section, when added, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(c) Declarant shall have the right and option, without the joinder, approval or consent of any person(s) or entity(ies) to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or part) within 1 mile of any real property then subject to the jurisdiction of the Association. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other properties as one scheme.

(d) In determining the number of Lots owned by Declarant for purposes of Class "B" membership status according to Section 3.2 above, the total number of Lots covered by this Declaration including all Lots added or annexed by Declarant shall be considered. If Class "B" membership has previously expired due to the ratio provisions set forth in Section 3.2(b)(i) above, but addition or annexation of additional property or Lots restores the ratio of Lots owned by Declarant to the number required for Class "B" membership within the period provided in Section 3.2, such Class "B" membership shall be reinstated.

**7.18 No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants or other terms or provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants or other terms or provisions contained in this Declaration. Any Owner acquiring a Lot in the Development in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant, the Association and the Committee harmless therefrom. Declarant shall not be responsible for the acts or omissions of any individual, entity or other Owners.

**7.19 Right of Enforcement.** The failure by Declarant, any Builder, the Association or the Committee to enforce any provision of this Declaration shall in no event subject Declarant, such Builder, the Association or the Committee to any claims, liability, costs or expense; it being the express intent of this Declaration to provide Declarant with the right (such right to be exercised at its sole and absolute discretion), but not the obligation to enforce the terms of this Declaration for the benefit of any Owner(s) of any Lot(s) in the Development.

**7.20 Residential Construction Liability Act.** Without waiving any rights under law or equity, all Owners acknowledge, covenant and agree that residential construction defect claims regarding any Home against Declarant or any homebuilder in Texas are governed by the Texas Residential Construction Liability Act (Tex. Prop. Code §27.001 *et seq.*, as amended) which preempts the Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code §17.41 *et seq.*, as amended) and any other law.

**7.21 EPA Compliance.** The Owner of each Lot agrees to comply with all EPA rules and regulations regarding erosion control and compliance with a Storm Water Pollution Prevention Plan affecting the Lots (the "Plan") which will include elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA under the National Pollutant Discharge Elimination System. Each Owner acknowledges that Declarant and any Builder will not bear any responsibility for complying with a Plan on any Lot after the sale of each Lot in the Development.

**7.22 Soil Movement.** Each Owner acknowledges that the failure or excessive movement of any foundation of any Home in the Development can result in the diminished value and overall desirability of the entire Development. Each Owner agrees and understands that the maintenance of the moisture content of the soils on each Lot is necessary to preserve the structural integrity of each Home in the Development. Each Owner also acknowledges that the long term value and desirability of the Development is contingent upon each Owner maintaining its Home so that no structural

structural failure or excessive soil movement occurs within the Development.

EACH OWNER IS HEREBY NOTIFIED THAT THE SOIL COMPOSITION IN NORTH TEXAS IN GENERAL AND THE DEVELOPMENT IN PARTICULAR AND THE CONDITION OF THE LOTS MAY RESULT IN THE SWELLING AND/OR CONTRACTION OF THE SOIL IN AND AROUND THE LOT IF THE OWNER OF THE LOT DOES NOT EXERCISE THE PROPER CARE AND MAINTENANCE OF THE SOIL REQUIRED TO PREVENT SOIL MOVEMENT.

If the Owner fails to exercise the necessary precautions, damage, settlement, movement or upheaval to the foundation and structural failure may occur. Owners are highly encouraged to install and maintain proper irrigation around their Home or take such other measures to ensure even, proportional, and prudent watering around the foundation of the Home.

By each Owner's acceptance of a deed to any Lot, each Owner, on behalf of Owner and Owner's representatives, successors and assigns, hereby acknowledges that Declarant and all Builders in the Development shall not be responsible or liable for, and Owner shall assume all risk and consequences of, any damage, settlement, movement or upheaval to the foundation, structural failure, or any damage to any other part of the Home caused by Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, and hereby releases and forever discharges, all Builders in the Development and Declarant and their respective shareholders, members, officers, directors, partners, employees, agents, representatives, affiliates, attorneys, successors and assigns, of and from any and all claim for the relief and causes of actions, liabilities, damages and claims whatsoever, known or unknown, direct or indirect, arising from or relating to Owner's failure to exercise proper care and maintenance of the soil required to prevent soil movement, including but not limited to, any damage caused by or related in any fashion to the failure or improper or uneven watering of the Lot, planting of improper vegetation near the foundation, or any action by any Owner that affects the drainage of any Lot.

**7.23 Compliance with Laws.** At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, and regulations with respect to the use, occupancy, and condition of the Property and any improvements thereon. If any provision contained in this Declaration or any amendment is found to violate any law, then the provision shall be interpreted to be as restrictive as possible to preserve as much of the original provision as allowed by law.

**7.24 Disclaimer of Usury.** All provisions contained in this Declaration, whether now existing or hereafter arising, are hereby limited so that in no contingency or event whatsoever, shall the interest paid or agreed to be paid by any party to any other party exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable at a rate in excess of that permitted under applicable law, then the interest so payable shall be reduced to the maximum amount permitted under applicable law and if from any circumstance any party shall ever receive anything of value from any other party deemed interest by applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount of the debt and should such excessive interest exceed the unpaid balance of principal, such excess shall be refunded to the party paying same. All interest paid or agreed to be paid by any party or to any party shall, to the extent permitted by applicable law, be amortized prorated, allocated and spread throughout the full period until payment in full of the principal so that the rate of interest is uniform throughout the term of such debt. This Section 7.24 shall control all provisions of this Declaration.

**7.25 Assignment of Declarant Rights.** Declarant may assign its rights to a successor Declarant hereunder by execution of a written document, recorded in Records of Dallas County, Texas specifically stating that Declarant has assigned its rights as such to a designated assignee and declaring such assignee to be the new "Declarant" hereunder.

**7.26 Arbitration of Disputes Involving Declarant.**  
(a) ANY AND ALL DISPUTES ARISING HEREUNDER BETWEEN AN OWNER AND DECLARANT, SHALL BE SUBMITTED TO BINDING ARBITRATION AND NOT TO A COURT FOR DETERMINATION. ARBITRATION SHALL COMMENCE AFTER WRITTEN NOTICE IS GIVEN FROM



EITHER PARTY TO THE OTHER, SUCH ARBITRATION SHALL BE ACCOMPLISHED EXPEDITIOUSLY IN DALLAS COUNTY AND SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL BE CONDUCTED BY THREE (3) ARBITRATORS, ONE OF WHOM SHALL BE APPOINTED BY THE OWNER AND ONE OF WHOM SHALL BE APPOINTED BY DECLARANT. THE THIRD ARBITRATOR SHALL BE APPOINTED BY THE FIRST TWO ARBITRATORS. THE ARBITRATORS SHALL BE SELECTED FROM A LIST OF ARBITRATORS SUBMITTED BY THE AAA. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. ARBITRATION SHALL NOT COMMENCE UNTIL THE PARTY REQUESTING IT HAS DEPOSITED ONE THOUSAND FIVE HUNDRED AND NO/100 U. S. DOLLARS (\$1,500.00) WITH THE ARBITRATORS AS A RETAINER FOR THE ARBITRATORS' FEES AND COSTS. THE PARTY REQUESTING ARBITRATION SHALL ADVANCE SUCH SUMS AS ARE REQUIRED FROM TIME TO TIME BY THE ARBITRATORS TO PAY THE ARBITRATORS' FEES AND COSTS, UNTIL THE PREVAILING PARTY IS DETERMINED OR THE PARTIES HAVE AGREED IN WRITING TO AN ALTERNATIVE ALLOCATION OF FEES AND COSTS. EACH PARTY SHALL PAY HIS/HER OWN LEGAL FEES AND COSTS AND ANY OTHER FEES INCURRED IN CONNECTION WITH AN ARBITRATION PROCEEDING WHICH ARISES OUT OF OR RELATES IN ANY WAY TO THIS AGREEMENT PROVIDED, HOWEVER, THAT THE ARBITRATION PANEL SHALL AWARD THE ARBITRATORS' FEES AND COSTS TO THE PREVAILING PARTY IN ITS ARBITRATION JUDGMENT.

(b) **Other Dispute Resolutions.** Notwithstanding Declarant's and Owner's intent to submit any controversy or claim arising out of or relating to this Declaration to arbitration, in the event that a court of competent jurisdiction shall determine or a relevant law shall provide that a particular dispute is not subject to the arbitration provisions in this Section, then the parties agree to the following provisions:

(c) **Waiver of Trial by Jury.** EACH OWNER ACKNOWLEDGES THAT THIS DECLARATION IS A SOPHISTICATED LEGAL DOCUMENT. ACCORDINGLY, JUSTICE WILL BEST BE SERVED IF ISSUES REGARDING THIS DECLARATION ARE HEARD BY A JUDGE IN A COURT PROCEEDING, AND NOT A JURY. EACH OWNER AGREES THAT ANY CLAIM, DEMAND, ACTION, OR CAUSE OR ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSSCLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS DECLARATION, ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHALL BE HEARD BY A JUDGE IN A COURT PROCEEDING AND NOT A JURY.

7.27 **Notice of Sale, Lease or Acquisition.** In the event an Owner sells or leases such Owner's lot, the Owner shall give to the Association, in writing, within thirty (30) days of the effective date of such sale or lease, the name of the purchaser or lessee of the lot and such other information as the Board may reasonably require. Upon acquisition of a lot, each new Owner shall give the Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require. This requirement also applies to all persons acquiring title to a lot at a foreclosure sale.

7.28 **Occupants Bound.** All provisions of the declaration, the design guidelines and of any rules promulgated by the board which govern the conduct of Owners within the Property and provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any lot. Any lease on any lot shall be deemed to provide that the lessee and all occupants of the leased lot shall be bound by the terms of this declaration, the design guidelines, the bylaws and the rules of the Association.

7.29 **City Provisions.** All construction within the Property shall also comply with all applicable City ordinances and regulations. If any ordinance or regulation imposed by the City imposes more demanding, extensive or restrictive requirements than those set forth in this Declaration, such requirements shall govern. No ordinance or regulations adopted by the City shall lessen the requirements set forth in these Covenants.

7.30 Exhibits. All exhibits are fully incorporated into this Declaration.

*Exhibit A – Legal Description of the Development*

5<sup>th</sup> IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on the  
day of February, 200 7.

WINTERHAVEN ESTATES, LP,  
a Texas limited partnership

By: Winterhaven Estates GP, LLC  
a Texas limited liability company  
its General Partner

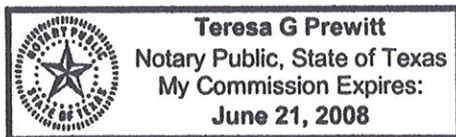
By: Wildwood Development Company, Inc.  
a Texas corporation  
its General Partner

By: [Signature]  
R. Derek Ryan, President

STATE OF TEXAS                    3  
  3  
COUNTY OF Dallas           3

This instrument was acknowledged before me on the 5<sup>th</sup> day of February, 200 7, by R. Derek Ryan, President of Winterhaven Estates GP, LLC, a Texas corporation, on behalf of said limited partnership.

[Signature]  
Notary Public, State of Texas



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**WINTERHAVEN ESTATES  
EXHIBIT A**

**Legal Description of the Development**

BEING a 20.00 acre tract of land situated in the Amos M. James Survey, Abstract No. 690, City of Cedar Hill, Dallas County, Texas;

said tract being more particularly described as follows:

BEGINNING at a 3/4-inch found iron rod for the northwest corner of said City of Cedar Hill tract, said corner being the northeast corner of Colonial Hills Baptist Church, an addition to the City of Cedar Hill, Texas, as recorded in Volume 87032, Page 156, Map Records Dallas County, Texas (M.R.D.C.T.), said corner being on the south right-of-way line of Wintergreen Road (55 foot right-of-way);

THENCE North 90 degrees 00 minutes 00 seconds East, along said south right-of-way line, a distance of 881.85 feet to a 1/2-inch found iron rod for the northeast corner of said City of Cedar Hill tract and the northwest corner of a tract of land described in deed to The Ranch at Cedar Hill Group, LLC, as recorded in Volume 2004015, Page 1668, D.R.D.C.T.;

THENCE South 00 degrees 38 minutes 49 seconds East, departing said south right-of-way line and along the east line of said City of Cedar Hill tract and the west line of said The Ranch at Cedar Hill tract, passing at a distance of 599.79 feet (3/4-inch found iron rod east of line 0.80 feet) the northwest corner of Lot 1, Block A, Canyon Properties Addition, an addition to the City of Cedar Hill, Texas, as recorded in Volume 97096, Page 1075, M.R.D.C.T., continuing along the west line of said Canyon Properties Addition, a total distance of 988.47 feet to a 3/8-inch found iron rod for the southeast corner of said City of Cedar Hill tract, said corner the northeast corner of a tract of land described in deed to Texas Power & Light Company, as recorded in Volume 80220, Page 2885, D.R.D.C.T.;

THENCE North 89 degrees 56 minutes 15 seconds West, along the south line of said City of Cedar Hill tract and the north line of said Texas Power & Light tract, a distance of 881.86 feet to a 3/4-inch found iron rod for the southwest corner of said City of Cedar Hill tract, said corner being the southeast corner of the aforementioned Colonial Hills Baptist Church addition;

THENCE North 00 degrees 38 minutes 49 seconds West, along the west line of said City of Cedar Hill tract and the east line of said Colonial Hills Baptist Church addition, a distance of 987.51 feet to the POINT OF BEGINNING AND CONTAINING 871,203 square feet or 20.00 acres of land more or less.

**FILED AND RECORDED**



OFFICIAL PUBLIC RECORDS

*[Signature]*  
John F. Warren, County Clerk  
Dallas County TEXAS

*Declaration of Covenants, Conditions and Restricti*

February 08, 2007 11:21:29 AM

FEE: \$120.00

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