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SUPPLEMENTAL DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
TIMBERGATE SECTION 1  
A RESIDENTIAL NEIGHBORHOOD

## TABLE OF CONTENTS

509-29-2652

<b>ARTICLE I.....</b>	<b>2</b>
<b>DEFINITIONS</b>	
SECTION 1. AGGREGATE PROPERTY .....	2
SECTION 2. ARCHITECTURAL CONTROL COMMITTEE or ACC .....	2
SECTION 3. ARCHITECTURAL REVIEW COMMITTEE" or ARC .....	2
SECTION 4. ASSOCIATIONS .....	2
SECTION 5. BUILDER .....	2
SECTION 6. COMMERCIAL ASSOCIATION.....	3
SECTION 7. COMMERCIAL BOARD .....	3
SECTION 8. COMMERCIAL DECLARATION.....	3
SECTION 9. COMMON AREA .....	3
SECTION 10. COMMUNITY WIDE STANDARD .....	3
SECTION 11. CORNER LOT .....	3
SECTION 12. DECLARANT .....	3
SECTION 13. DWELLING UNIT.....	3
SECTION 14. IMPROVEMENT .....	3
SECTION 15. IMPROVEMENT TO PROPERTY .....	4
SECTION 16. LOT .....	4
SECTION 17. MEMBER.....	4
SECTION 18. NEIGHBORHOOD .....	4
SECTION 19. NEIGHBORHOOD ASSESSMENTS .....	5
SECTION 20. NEIGHBORHOOD EXPENSES .....	5
SECTION 21. OWNER.....	5
SECTION 23. PROPERTIES.....	5
SECTION 24. RESIDENTIAL ASSOCIATION .....	5
SECTION 25. RESIDENTIAL BOARD .....	5
SECTION 26. STREET .....	5
SECTION 27. SUBDIVISION PLATS.....	5
SECTION 28. SUPPLEMENTAL DECLARATION.....	6
<b>ARTICLE II.....</b>	<b>6</b>
<b>COORDINATION BETWEEN THE COMMERCIAL ASSOCIATION AND THE RESIDENTIAL ASSOCIATION</b>	
SECTION 1. JURISDICTION.....	6
SECTION 2. CONTRACTUAL DIVISION OF AUTHORITY.....	6
<b>ARTICLE III.....</b>	<b>7</b>
<b>ORGANIZATION AND VOTING RIGHTS</b>	
SECTION 1. ORGANIZATION.....	7
SECTION 2. BOARD OF DIRECTORS .....	7
SECTION 3. MEMBERSHIP.....	7
SECTION 4. VOTING .....	7

<b>ARTICLE IV</b>		8
<b>COVENANT FOR MAINTENANCE ASSESSMENTS</b>		
SECTION 1.	CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.	8
SECTION 2.	PURPOSE OF ASSESSMENTS	9
SECTION 3.	MAXIMUM LEVEL OF ANNUAL ASSESSMENTS	10
SECTION 4.	SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS	11
SECTION 5.	NOTICE AND QUORUM	11
SECTION 6.	RATES OF ASSESSMENT	11
SECTION 7.	DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT	12
SECTION 8.	EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE RESIDENTIAL ASSOCIATION	12
SECTION 9.	SUBORDINATION OF THE LIEN TO MORTGAGES	13
SECTION 10.	EXEMPT PROPERTY	13
<b>ARTICLE V</b>		13
<b>PROPERTY RIGHTS IN THE COMMON AREA</b>		
SECTION 1.	OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT	13
SECTION 2.	DELEGATION OF USE	15
<b>ARTICLE VI</b>		15
<b>ARCHITECTURAL APPROVAL</b>		
SECTION 1.	ACC	15
SECTION 2.	APPROVAL OF IMPROVEMENTS REQUIRED	16
SECTION 3.	ADDRESS OF COMMITTEE	16
SECTION 4.	SUBMISSION OF PLANS	16
SECTION 5.	CRITERIA FOR APPROVAL	16
SECTION 6.	ARCHITECTURAL GUIDELINES	17
SECTION 7.	ARCHITECTURAL REVIEW FEE	17
SECTION 8.	DECISION OF COMMITTEE	17
SECTION 9.	APPEAL TO ASSOCIATION BOARD	17
SECTION 10.	FAILURE OF COMMITTEE TO ACT ON PLANS	18
SECTION 11.	PROSECUTION OF WORK AFTER APPROVAL	18
SECTION 12.	INSPECTION OF WORK	18
SECTION 13.	NOTICE OF NONCOMPLIANCE	19
SECTION 14.	APPEAL TO RESIDENTIAL BOARD OF FINDING OF NONCOMPLIANCE	19
SECTION 15.	CORRECTION OF NONCOMPLIANCE	19
SECTION 16.	NO IMPLIED WAIVER OR ESTOPPEL	20
SECTION 17.	POWER TO GRANT VARIANCES	20
SECTION 18.	COMPENSATION OF ACC	21
SECTION 19.	RECORDS OF ACTION	21
SECTION 20.	ESTOPPEL CERTIFICATES	21
SECTION 21.	NONLIABILITY FOR ACC ACTION	21
SECTION 22.	CONSTRUCTION PERIOD EXCEPTION	22

<b>ARTICLE VII</b>	22
<b>ARCHITECTURAL RESTRICTIONS</b>	
SECTION 1. AIR CONDITIONERS	22
SECTION 2. ANTENNAS	22
SECTION 3. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE	22
SECTION 4. CARPORTS/GARAGES	23
SECTION 5. DISPOSAL UNITS	23
SECTION 6. DRAINAGE	23
SECTION 7. DRAINAGE AND SEPTIC SYSTEMS	23
SECTION 8. DRIVEWAYS	24
SECTION 9. DWELLING UNIT SIZE	24
SECTION 10. ENFORCEMENT OF EXTERIOR DWELLING OR	24
SECTION 11. EXTERIOR LIGHTING	24
SECTION 12. FLAGPOLES	25
SECTION 13. GRASS, SHRUBBERY AND LANDSCAPING	25
SECTION 14. HEIGHT AND CHARACTER OF DWELLING UNIT	25
SECTION 15. LOCATION OF DWELLING UNIT	25
SECTION 16. ZERO LOT LINE DWELLINGS	25
SECTION 17. MAILBOXES	25
SECTION 18. PLAYGROUND	25
SECTION 19. POOLS	26
SECTION 20. PRIVATE UTILITY LINES	26
SECTION 21. ROOFS	26
SECTION 22. WALKWAYS	26
SECTION 23. SIGNS	26
SECTION 24. SOUND DEVICES	27
SECTION 25. SUPPLEMENTAL DECLARATIONS	27
SECTION 26. TEMPORARY BUILDINGS	27
SECTION 27. TRAFFIC SIGHT AREAS	28
SECTION 28. TYPE OF CONSTRUCTION	28
SECTION 29. TYPE OF RESIDENCE	28
SECTION 30. USE OF TEMPORARY STRUCTURES	28
SECTION 31. VARIANCE	29
SECTION 32. WALLS, FENCES AND HEDGES	29
SECTION 33. WINDOW TREATMENT	29
<b>ARTICLE VIII</b>	30
<b>USE RESTRICTIONS</b>	
SECTION 1. ANIMALS AND LIVESTOCK	30
SECTION 2. DISPOSAL OF TRASH	30
SECTION 3. LOT MAINTENANCE	30
SECTION 4. MINERAL PRODUCTION	31
SECTION 5. NUISANCES	31
SECTION 6. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY	31
SECTION 7. RESIDENTIAL USE	32
SECTION 8. STORAGE AND REPAIR OF VEHICLES	32
SECTION 9. STORAGE OF BUILDING MATERIALS	32
<b>ARTICLE IX</b>	33
<b>EASEMENTS</b>	
SECTION 1. EASEMENTS	33
SECTION 2. UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM	33

SECTION 3. CABLE TELEVISION.....	34
ARTICLE X.....	34
ENFORCEMENT	
ARTICLE XI.....	34
ANNEXATION OF ADDITIONAL PROPERTY	
SECTION 1. ANNEXATION.....	34
SECTION 2. OTHER ANNEXATIONS.....	35
ARTICLE XII.....	35
GENERAL PROVISIONS	
SECTION 1. GENERAL.....	35
SECTION 2. AMENDMENT.....	36
SECTION 3. SEVERABILITY.....	36
SECTION 4. GENDER AND GRAMMAR.....	36
SECTION 5. TITLES.....	36
SECTION 6. REPLATTING.....	36
SECTION 7. MERGER AND CONSOLIDATION.....	36
SECTION 8. DISSOLUTION.....	37

**SUPPLEMENTAL DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR TIMBERGATE HOMEOWNERS' ASSOCIATION, INC.  
SECTION I,  
A RESIDENTIAL NEIGHBORHOOD**

THIS DECLARATION, made as of the date hereinafter set forth by Timbergate Joint Venture, a Texas corporation (hereinafter referred to as "Declarant") ;

**WITNESSETH:**

WHEREAS, Declarant is the owner of the property described in Exhibit "A" attached hereto; and

WHEREAS, it is the desire of Declarant to provide for the preservation of the values and amenities in such property and, to this end to subject the Lots (described by recorded Plat File No. 371008 of the Harris County Map Records) as a residential subdivision to be developed within the jurisdiction of the Timbergate Homeowners' Association, Inc. (hereinafter referred to as the "Residential Association") and to the additional covenants, conditions and restrictions hereinafter set forth for the benefit of the residential lots and all present and future owners thereof; and

WHEREAS, the Lots are a portion of the Aggregate Property which is subject to the jurisdiction of the Clayton Park Property Owners' Association, Inc., a Texas non-profit corporation (hereinafter referred to as the "Commercial Association") as originally defined under the Clayton Park Declaration of Covenants, Conditions and Restrictions recorded under Harris County Clerk's File No. J413913, and subject further to the Amendment recorded under Harris County Clerk's File No. P486156, and the Articles of Annexation recorded under Harris County Clerk's File No. K494136 and the Second Amendment recorded under Harris County Clerk's File No. R429305; organized and empowered by the Commercial Declaration to collect assessments and to provide, among other things, maintenance of certain esplanades, landscape terms and buffers within the Aggregate Property and other services benefiting such property; and

WHEREAS, Declarant wishes to provide an efficient arrangement whereby the services provided to the Aggregate Property by the Commercial Association will be provided to the Residential Association without a duplication of effort or unnecessary costs.

NOW, THEREFORE, Declarant hereby declares that the Lots in the property described in recorded Plat File Number 371008 shall be held, sold and conveyed subject to the following easements, additional restrictions, covenants and conditions, which shall run with said Lots and shall be binding upon all parties having any right, title or interest in said Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

SECTION 1. "AGGREGATE PROPERTY" shall mean and refer to that certain tract(s) of land governed by those documents filed under Harris County Clerk's File No. J413913, P486156, K494136, and any other applicable references or properties which may be provided for in the Commercial Declaration and/or any future REPLAT or amendments thereto.

SECTION 2. "ARCHITECTURAL CONTROL COMMITTEE" or "ACC" shall mean and refer to that certain Committee created pursuant to Article VI of the Residential Declaration. The ACC is created for the purpose of review of all residential construction and/or improvements to be located on any residential lot in advance of any construction. Review of the ARC (hereinafter defined) shall be in addition to the review of the ACC and the conclusion of the ARC shall be superior and final over any review process.

SECTION 3. "ARCHITECTURAL REVIEW COMMITTEE" or "ARC" shall refer to that Committee created and authorized pursuant to Article V of the Clayton Park Declaration of Covenants, Conditions and Restrictions, which provides for the review and approval of all plans for any construction and/or improvement to the Aggregate Property in advance of any construction.

SECTION 4. "ASSOCIATIONS" shall refer to both the Commercial Association and the Residential Association.

SECTION 5. "BUILDER" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

SECTION 6. "COMMERCIAL ASSOCIATION" shall mean and refer to The Clayton Park Property Owners' Association, Inc., a Texas non-profit corporation, its successors and assigns.

SECTION 7. "COMMERCIAL BOARD" shall mean the Board of Directors of the Clayton Park Property Owners' Association, Inc.

SECTION 8. "COMMERCIAL DECLARATION" shall mean and refer to that certain Declaration of Covenants, Conditions, and Restrictions imposed on the Aggregate Property as described in and filed under Harris County Clerk's File Nos. J413913, P486156, and K494136 recorded in the Official Public Records of Real Property of Harris County, Texas.

SECTION 9. "COMMON AREA" shall mean and refer to any properties, real or personal, owned by the Residential Association for the common use and enjoyment of the Members of the Residential Association.

SECTION 10. "COMMUNITY WIDE STANDARD" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties, which may be more specifically determined by the Board of Directors, the Architectural Review Committee, and the Architectural Control Committee.

SECTION 11. "CORNER LOT" shall mean and refer to a Lot which abuts on more than one Street.

SECTION 12. "DECLARANT" shall mean and refer to The Timbergate Joint Venture of Texas, Inc., a Texas corporation, its successors and assigns.

SECTION 13. "DWELLING UNIT" shall mean a residential building designed for, and limited and restricted to, occupancy by a single family on a Lot, not including an accessory building or garage. A mobile home is not a Dwelling Unit.

SECTION 14. "IMPROVEMENT" shall mean all structures and any appurtenances thereto of every type or kind, which are visible on a Lot, including, but not limited to: a Dwelling Unit, buildings, outbuildings, swimming pools, spas, hot tubs, patio covers, awnings, painting of any exterior surfaces of any visible structure, additions, sidewalks, walkways, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening, walls, retaining walls, stairs, decks, fixtures, windbreaks, poles, signs, exterior tanks, exterior air conditioning fixtures and equipment, water softener fixtures,



exterior lighting, recreational equipment or facilities, radio, conventional or cable or television antenna or dish, microwave television antenna, and landscaping that is placed on and/or visible from any Lot.

SECTION 15. "IMPROVEMENT TO PROPERTY" includes, without limitation: (a) the construction, installation or erection of any building, structure, fence, Dwelling Unit or other Improvement, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure, fence, or other Improvements; (c) the grading, excavation, filling, or similar disturbance to the surface of any Lot, including, without limitation, change of grade, change of ground level, change of drainage pattern, or change of stream bed; (d) installation or changes to the landscaping on any Lot; and (e) any exterior modification, expansion, change or alteration of any previously approved Improvement to Property, including any change of exterior appearance, color, or texture not expressly permitted by this Declaration, Architectural Guidelines, or Rules and Regulations.

SECTION 16. "LOT" shall mean and refer to any of the numbered lots shown on the Subdivision Plat(s) and/or any future replat of the Subdivision Plat(s) recorded under File No. R200251, intended for the construction of a residence, excluding all reserve tracts shown on the Subdivision Plat(s), but including Lots hereafter created by a replat or any addition of land thereto.

SECTION 17. "MEMBER" shall refer to every person or entity which holds a membership in the Residential Association.

SECTION 18. "NEIGHBORHOOD" shall mean and refer to each separately designated and denominated residential area within the Properties, comprised of one or more types of housing and other permitted uses, whether or not governed by an additional property owners' association. The Declarant or other Owner of such Property shall designate in a Supplemental Declaration that such Property may constitute a separate neighborhood. All property subject to this Declaration which is not included within a designated Neighborhood shall be considered part of the Neighborhood. The Declarant or Residential Board may grant separate Neighborhood status to any area upon written request by the Owners representing a majority of the total votes within the proposed Neighborhood.

SECTION 19. "NEIGHBORHOOD ASSESSMENTS" shall mean assessments levied by the Residential Board for payment of Neighborhood Expenses. Such Neighborhood Assessments shall be determined and adopted by the Residential Board and this fee shall be in addition to such fee(s) as defined by the Commercial Association and any other Residential Association assessments.

SECTION 20. "NEIGHBORHOOD EXPENSES" shall mean and include the actual and estimated expenses incurred by the Residential Association for the benefit of the Owner(s) of a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements.

SECTION 21. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation or those owning an easement right, a mineral interest, or a royalty interest.

SECTION 23. "PROPERTIES" shall mean and refer to the Lot or Lots of real property described in the Subdivision Plat recorded under File No. 371008, and any additional property that may be hereafter added to the jurisdiction of the Residential Association as provided herein.

SECTION 24. "RESIDENTIAL ASSOCIATION" shall mean and refer to the Timbergate Homeowners' Association, Inc., which shall be governed by a separate Board of Directors, and shall have a Designated Representative (appointed by the Board) to communicate and vote on behalf of all Owners within the Residential Association regarding matters of the Clayton Park Property Owners' Association, Inc.

SECTION 25. "RESIDENTIAL BOARD" shall mean and refer to the Board of Directors of the Timbergate Homeowners Association, Inc.

SECTION 26. "STREET" shall mean and refer to any street, drive, boulevard, road, alley, lane, avenue, or thoroughfare as shown on the residential Subdivision Plat(s).

SECTION 27. "SUBDIVISION PLATS" shall mean and refer to the recorded maps, plats or any REPLAT of a portion of the Properties recorded and filed in the Map Records of Harris County, Texas.

SECTION 28. "SUPPLEMENTAL DECLARATION" shall refer to (i) an amendment to this Declaration subjecting additional property to this Declaration and (ii) to an instrument hereafter executed by the Declarant or other Owner or Owners of the affected property which designates a Neighborhood or imposes additional restrictions on all or part of the Properties, which additional restrictions shall be enforced by the Residential Association. Unless and until this property is removed from the jurisdiction of Clayton Park Property Owners' Association, Inc., it shall also be subject to the jurisdiction and enforcement of the Clayton Park Property Owners' Association, Inc..

## ARTICLE II

### COORDINATION BETWEEN THE COMMERCIAL ASSOCIATION AND THE RESIDENTIAL ASSOCIATION

SECTION 1. JURISDICTION. The Lots are subject to the jurisdiction of the Commercial Association and assessments will be levied by the Residential Association and Commercial Association pursuant to the provisions of this Declaration and the Commercial Declaration, respectively, unless and until the Properties described on Exhibit "A" and/or any amendment hereto shall be removed from the jurisdiction of Commercial Association at which time the Residential Association will govern or the Residential Association may merge with a like entity.

SECTION 2. CONTRACTUAL DIVISION OF AUTHORITY. Each Association will perform its respective functions as set forth in its organizational documents and the applicable Declaration. However, in order to alleviate a duplication of operations and to minimize administrative costs, the Residential Association and the Commercial Association retain the right (but not the obligation) to enter into a contract that provides, inter alia, the Commercial Association shall maintain the esplanades and side setbacks along all boulevard streets within the Properties, pay the costs of street lights, both existing fixtures and those to be constructed within the Properties, and maintain all detention pond areas within the Aggregate Property, while the Residential Association will maintain all cul-de-sac islands and landscape/recreation reserves within the Properties and will operate and maintain the Common Area within the Properties.

**ARTICLE III****ORGANIZATION AND VOTING RIGHTS**

**SECTION 1. ORGANIZATION.** Declarant has caused the Residential Association to be organized and the properties to be formed as a Neighborhood pursuant to this Supplemental Declaration.

The principal purposes of the Residential Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance, preservation and architectural control of the Lots, and the general overall supervision of all of the affairs of and the promotion of the health, safety, and welfare of the residents within the Properties which shall be administered under the overall jurisdiction of the Commercial Association.

**SECTION 2. BOARD OF DIRECTORS.** The Residential Association shall act through a Residential Board comprised of not less than three (3) Directors, which shall represent and communicate the affairs of the Residential Association, as specified in the By-Laws of the Residential Association. The number of Directors may be changed by amendment of the By-Laws of the Residential Association, however the number shall never be less than three (3). The initial term and election of Directors shall be as defined in the Articles of Incorporation or Bylaws.-

**SECTION 3. MEMBERSHIP.** Every Owner within the Residential Association shall be a member. Membership shall be appurtenant to and may not be separated from ownership of any property which is subject to Neighborhood and other Assessments imposed by the Residential Association and/or Commercial Association, as applicable.

**SECTION 4. VOTING.** The Residential Association shall initially have two classes of voting membership:

- (a) **CLASS A.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all of 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 vote be cast with respect to any Lot. No cumulative voting shall be permitted.

- (b) CLASS B. Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned.

The Class B membership shall cease and be converted to Class A membership on the occurrence the earlier of the following events: (i) when the total votes in the Class A membership equal the total votes in the Class B membership, or (ii) on December 31, 2001, whichever is later, or (iii) as may be otherwise defined in writing by Declarant.

However, at such time that additional property is annexed into the Residential Association, the Class B membership of the Declarant, shall, if it has previously ceased due to one of the conditions listed above in (i), (ii), or (iii), be reinstated and shall apply to all Lots owned by Declarant in the newly annexed portion of the Properties as well as to all Lots owned by Declarant in all other areas of the Properties. Such reinstatement is subject to further cessation (and subsequent reinstatement at the time of subsequent annexations to the Properties) in accordance with the limitations set forth in the preceding paragraphs (i), (ii), or (iii) of this Section, whichever occurs first. However, upon reinstatement of Declarant's Class B membership and voting rights due to annexation of additional property, the date in Section 4 of this Article shall be redefined (to the extent necessary) such that it is in no event less than ten (10) years from the date of the recorded annexation, unless otherwise defined by a recorded document.

#### **ARTICLE IV**

##### **COVENANT FOR MAINTENANCE ASSESSMENTS**

##### **SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS.**

The Declarant, for each Lot within the Properties, hereby covenants and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be expressed in the deed or other evidence of the conveyance, is deemed to covenant and agree to pay the Associations the following:

- (a) annual assessments or charges;
- (b) special assessments for capital improvements; and
- (c) Neighborhood Assessments, or Reimbursement Assessments, if applicable;

such assessments or charges to be fixed, established and collected as hereinafter provided. These assessments and charges, together with interest thereon as hereinafter provided, costs of collection, and reasonable attorney's fees, shall be a charge on the land and shall be secured by a continuing lien upon the property against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs of collection, and reasonable attorney's fees shall also be and remain the personal obligation of the Owner of the particular Lot at the time the assessment or charge fell due, notwithstanding any subsequent transfer of title of such property. The personal obligation for delinquent assessments and charges shall not pass to successors in title unless expressly assumed by them. However, successors in title shall nonetheless acquire title to the land subject to the lien securing the assessments and charges.

SECTION 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Associations shall be used for the purpose of promoting the recreation and welfare of the residents in the Properties, including but not limited to, maintenance of cul-de-sac islands, Street esplanades and rights-of-way, and landscape/recreation reserves within the Properties, and operation and maintenance of the Common Area and may include the maintenance of all turf area exclusive of plant bed areas in the front yard of each residence and/or within alley easements. Without limiting the foregoing, the total assessments collected by the Residential Association, insofar as the same may be sufficient, shall be applied toward the payment of all taxes, insurance premiums and repair, maintenance and acquisition expenses incurred by the Residential Association, payments to the Commercial Association pursuant to any contractual agreements with the Residential Association, and, at the option (without obligation) of the Residential Board, for any and all of the following purposes: lighting, improving and maintaining streets, alleyways, sidewalks, paths, parks, parkways, easements, and esplanades in the Properties; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with the enforcement of this Declaration; employing policemen or watchmen and/or a patrol service; fogging and furnishing other general insecticide services; providing for the planting and upkeep of trees, grass and shrubbery in esplanades, easements, and in the Common Area; acquiring and/or constructing or maintaining any amenities or recreational facilities that are or will

be operated in whole or in part for the benefit of the Owners; and doing any other thing necessary or desirable in the opinion of the Residential Board to keep and maintain the lands within the Properties in neat and good order, or which they consider of general benefit to the owners or occupants of the Properties, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance, and other charges as specified herein. The judgment of the Residential Board in establishing annual assessments, special assessments and other charges, and in the expenditure of said funds, shall be final and conclusive so long as said judgment is exercised in good faith.

Neighborhood Assessments shall be levied equally against all of the Lots in a particular Neighborhood where the Residential Board has determined that certain expenses of the Residential Association benefit only that Neighborhood. Upon written request by the owners representing a majority of the total votes within a Neighborhood, the Residential Board shall initiate a service benefiting only that particular Neighborhood which shall be paid for by a Neighborhood Assessment, or the Residential Board may discontinue a service previously provided to a Neighborhood, as may be agreed upon by the members of such Neighborhood. Such expenses benefiting only a particular Neighborhood may include, without limitation, expenses incurred for maintenance and repair of the following items and provision of the following services within a particular Neighborhood: private streets, trash and back door garbage pick-up service as opposed to curb side service, lighting, mailboxes, operation and maintenance of landscaping, fountains and signage within the particular Neighborhood, entry gates, perimeter fencing, recreational equipment.

SECTION 3. MAXIMUM LEVEL OF ANNUAL ASSESSMENTS. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner by Declarant, the maximum annual assessment shall be \$800 per Lot. Each year thereafter the maximum annual assessment may be increased by the Residential Board, at its sole discretion and without a vote of the Members of the Residential Association, by an amount not to exceed a twenty percent (20%) increase over the maximum assessment for the previous year. The maximum annual assessment may be increased above twenty percent (20%) by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. After consideration of current maintenance costs and future needs of the Residential Association, the Residential Board may fix the

annual assessment at any amount not in excess of the maximum. Annual assessments may be collected on a monthly basis at the Residential Board's election. Neighborhood Assessments shall be subject to the same formula; however, members within a Neighborhood may agree to increase or decrease Neighborhood services by a vote of fifty-one percent (51%).

SECTION 4. SPECIAL ASSESSMENT FOR CAPITAL IMPROVEMENTS. In addition to the annual assessment and Neighborhood Assessments authorized above, the Residential Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, or repair or replacement of a capital improvement located upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the total eligible votes of Members who are voting in person or by proxy at a meeting duly called for such purpose. At the Residential Board's election, special assessments may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 above shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meetings. No subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 6. RATES OF ASSESSMENT. Annual assessments, special assessments, and Neighborhood Assessments on all assessable Lots, shall be fixed at a uniform rate. Those Lots that are owned by a Builder and that are not occupied as residences shall be assessed based upon the following formula: Lots owned by a Builder shall be assessed at a rate equal to one hundred percent of the annual assessment as established by the Residential Board. The Declarant shall elect to pay one-half the rate established for each Lot owned or pay the annual operating deficit, if any, determined by the approved operating budget adopted for the subsequent calendar year. Annually, the Declarant shall notify the Residential Association in writing and present their selected method of calculation for



maintenance fees on or before September 30th of each year. The rate of assessment for each Lot shall change as the character of ownership and the status of occupancy changes. For the benefit of record keeping and calculation, in any given year wherein Declarant elects to be assessed on the basis of the annual operating deficit, those lots owned by the Declarant shall not be deemed assessable until the character of ownership changes.

SECTION 7. DATE OF COMMENCEMENT AND DETERMINATION OF ANNUAL ASSESSMENT. The annual assessment provided for herein shall commence as to all assessable Lots on a date fixed by the Residential Board. If the Residential Board determines to fix an assessment for 1996, such assessment shall be adjusted according to the number of months remaining in the calendar year and shall be due and payable thirty (30) days after written notice of the assessment is sent to every Owner whose Lot is subject to assessment. On or before the 30th day of November in each year, the Residential Board shall fix the amount of the annual assessment to be levied against each assessable Lot in the next calendar year. Written notice of the assessment amount, as determined by the Residential Board, shall be sent to every Owner whose Lot is subject to the payment thereof. Each annual assessment shall be due and payable in advance on the first day of January of each calendar year. The Residential Association shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Residential Association (or its designated agent), setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Residential Association as to the status of assessments on a particular Lot is binding upon the Residential Association as of the date of its issuance.

SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE RESIDENTIAL ASSOCIATION. Any assessments or charges which are not paid when due shall be delinquent. If an assessment or charge is not paid within thirty (30) days after the due date, it shall bear interest at the rate of ten percent (10%) per annum from the due date and the Residential Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien herein retained against the property. Interest as above specified, costs and reasonable attorney's fees incurred in any such action shall be added to the amount of such assessment or charge, and become secured by the lien. Each such Owner, by his acceptance of a deed hereby expressly vests in

the Residential Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Residential Association in a like manner as a mortgage or deed of trust lien foreclosure on real property, and such Owner expressly grants to the Residential Association a power of sale and non-judicial foreclosure in connection with the lien. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

SECTION 9. SUBORDINATION OF THE LIEN TO MORTGAGES. As above provided, the title to each Lot shall be subject to a lien securing the payment of all assessments and charges due the Associations, but the lien shall be subordinate to the lien of any purchase money lien. Sale or transfer of any Lot shall not affect the lien in favor of the Associations; provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien securing such assessment or charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any charges or assessments thereafter becoming due or from the lien thereof. In addition to the automatic subordination provided for above, the Residential Association, in the sole discretion of its Residential Board, may subordinate the lien securing any assessment provided for herein to any other mortgage lien or encumbrance, subject to such limitations, if any, as the Residential Board may determine.

SECTION 10. EXEMPT PROPERTY. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments and charges created herein. Notwithstanding the foregoing, no Lot which is used as a residence shall be exempt from said assessments and charges.

**ARTICLE V****PROPERTY RIGHTS IN THE COMMON AREA**

**SECTION 1. OWNER'S EASEMENT FOR ACCESS AND ENJOYMENT.** Subject to the provisions herein stated, every Member shall have an easement of access and a right and easement of enjoyment in the Common Area, and such right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights of the Residential Association:

- (a) The Residential Association shall have the right to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (b) The Residential Association (as may be determined by the Residential Board) shall have the right to borrow money. With the assent of two-thirds (2/3rds) of each class of Members, the Residential Board shall have the right to mortgage, pledge, deed in trust, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.
- (c) The Residential Association (as may be determined by the Residential Board) shall have the right to take such steps as are reasonably necessary to protect the Common Area against foreclosure of any such mortgage.
- (d) The Residential Association (as may be determined by the Residential Board) shall have the right to suspend the voting rights and enjoyment rights of any Members for any period during which any assessment or other amount owed by such Member to the Residential Association remains unpaid in excess of thirty (30) days.
- (e) The Residential Association (as may be determined by the Residential Board) shall have the right to establish reasonable rules and regulations governing the Members' use and enjoyment of the Common Area, and to suspend the enjoyment rights and voting rights of any Member for any

period not to exceed sixty (60) days for any infraction of such rules and regulations.

- (f) The Residential Board shall be authorized to execute deed(s). Upon approval of two-thirds (2/3rds) of each class of Members, the Residential Association shall have the right to dedicate, sell or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be approved by said two-thirds (2/3rds) of each class of Members; provided, however, nothing contained herein shall be construed to limit the right of the Residential Association to grant or dedicate easements in portions of the Common Area to public or private utility companies. Such a vote shall authorize the Residential Board to execute appropriate deed(s).

SECTION 2. DELEGATION OF USE. Each Member shall have the right to extend his rights and easements of enjoyment to the Common Area to the members of his family, to his tenants who reside in the Properties, and to such other persons as may be permitted by the Residential Association.

## ARTICLE VI

### ARCHITECTURAL APPROVAL

SECTION 1. ACC. As used in this Declaration the term "Architectural Control Committee" or "ACC" shall mean a committee of three (3) members, all of whom shall be appointed by Declarant, except as otherwise set forth herein. Declarant shall have the continuing right to appoint all three (3) members until the earlier of (a) the date the last Lot owned by Declarant is sold (except in connection with a conveyance to another party that is a successor as Declarant), or (b) such date as the Declarant elects to discontinue such right of appointment by written notice to the Residential Board. Thereafter, the Residential Board shall have the right to appoint all members. Members of the ACC appointed by Declarant may be removed at any time and shall serve until resignation or removal by Declarant. Members of the ACC appointed by the Residential Board may be removed at any time by the Residential Board, and shall serve for such term as may be designated by the Residential Board or until resignation or removal by the Residential Board. The ACC shall have the right to name a spokesman ("Designated

Representative") by recordation of a notice of appointment in the official Public Records of Real Property of Harris County, Texas, which notice must contain the name, address, and telephone number of the Committee. All third parties shall be entitled conclusively to rely upon such person's action(s) as the action(s) of the ACC itself until such time as the Declarant, the Residential Board or the ACC shall record a notice of revocation of such appointment in the Official Public Records of Real Property of Harris County, Texas.

SECTION 2. APPROVAL OF IMPROVEMENTS REQUIRED. The approval of a majority of the members of the ACC or the approval of the "Designated Representative" (as defined in Section 1 above) shall be required for any Improvement to Property before commencement of construction of such Improvement to Property, other than an Improvement to Property made by Declarant.

SECTION 3. ADDRESS OF COMMITTEE. The address of the ACC shall be at the principal office of the Association.

SECTION 4. SUBMISSION OF PLANS. Before commencement of work to accomplish any proposed Improvement to Property, the person proposing to make such Improvement to Property shall submit to the ACC at its offices copies of such descriptions, surveys, plot plans, drainage plans, construction plans, specifications, and samples of materials and colors as the ACC reasonably shall request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property, as may be more particularly described from time to time in any Architectural Guidelines adopted by the ACC. The ACC may require submission of additional plans, specifications, or other information before approving or disapproving the proposed Improvement to Property. Until receipt by the ACC of all required materials in connection with the proposed Improvement to Property, the ACC may postpone review of any materials submitted for approval.

SECTION 5. CRITERIA FOR APPROVAL. The ACC shall approve any proposed Improvement to Property only if it determines in its reasonable discretion that the Improvement to Property in the location indicated will not be detrimental to the appearance of the surrounding areas of the Properties as a whole; that the appearance of the proposed Improvement to Property will be in harmony with the surrounding areas of the Properties, including, without limitation, quality and color of materials and location with respect to topography and finished grade elevation; that the Improvement to Property will

comply with the provisions of this Declaration and any applicable plat, ordinance, governmental rule, or regulation; that the Improvements to Property will not detract from the beauty, wholesomeness, and attractiveness of the Subdivision or the enjoyment thereof by Owners; and that the upkeep and maintenance of the proposed Improvement to Property will not become a burden on the Association. The ACC is specifically granted the authority to disapprove proposed improvements because of the unique characteristics or configuration of the Lot on which the proposed improvement would otherwise be constructed, even though the same or a similar type of improvement might or would be approved for construction on another Lot. The ACC may condition its approval of any proposed Improvement to Property upon the making of such changes thereto as the ACC may deem appropriate.

SECTION 6. ARCHITECTURAL GUIDELINES. The ACC from time to time may supplement or amend the Architectural Guidelines, which provides an outline of minimum acceptable architectural standards; provided, however, that such outline will serve as a minimum guideline only and the ACC may impose other requirements in connection with its review of any proposed Improvements. If the Architectural Guidelines impose requirements that are more stringent than the provisions of this Declaration, the provisions of the Architectural Guidelines shall control.

SECTION 7. ARCHITECTURAL REVIEW FEE. The ACC may, in its Architectural Guidelines, provide for the payment of a fee to accompany each request for approval of any proposed Improvement to existing home to cover the cost of inspecting and or subsequent inspection(s) any said improvement(s) to Property. The ACC may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the reasonable cost of the proposed Improvement to Property, but in no circumstances shall exceed \$100.

SECTION 8. DECISION OF COMMITTEE. The decision of the ACC shall be made within thirty (30) days after receipt by the ACC of all materials required by the ACC. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the ACC shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the ACC. The Owner, however, is responsible under all circumstances to conform to the provisions of these restrictions in their entirety.

SECTION 9. APPEAL TO ASSOCIATION BOARD. If the ACC denies or refuses approval of a proposed Improvement to Property, the Applicant may appeal to the Residential Board by giving written notice of such appeal to the Association and the ACC within twenty (20) days after such denial or refusal. The Residential Board shall hear the appeal with reasonable promptness after reasonable notice of such Notice and Hearing to the Applicant and the ACC, and shall decide with reasonable promptness whether or not the proposed Improvement to Property shall be approved. The decision of the Residential Board shall be final and binding on all Persons.

SECTION 10. FAILURE OF COMMITTEE TO ACT ON PLANS. Any request for approval of a proposed Improvement to Property shall be deemed approved by the ACC, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the ACC within thirty (30) days after the date of receipt by the ACC of all required materials; provided, however, that no such deemed approval shall operate to permit any Owner to construct or maintain any Improvement to Property that violates any provision of this Declaration or the Architectural Guidelines. The ACC shall at all times retain the right to object to any Improvement to Property that violates any provision of this Declaration or the Architectural Guidelines.

SECTION 11. PROSECUTION OF WORK AFTER APPROVAL. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in strict conformity with the description of the proposed Improvement to Property in the materials submitted to the ACC. Failure to complete the proposed Improvement to Property within nine (9) months after the date of approval or such other period of time as shall have been authorized in writing by the ACC (unless an extension has been granted by the ACC in writing) or to complete the Improvement to Property in strict conformity with the description and materials furnished to the ACC, shall operate automatically to revoke the approval by the ACC of the proposed Improvement to Property. No Improvement to Property shall be deemed completed until the exterior facia and trim on the structure have been applied and finished and all construction materials and debris have been cleaned up and removed from the site and all rooms in the Dwelling Unit, other than attics, have been finished. Removal of materials and debris shall not take in excess of thirty (30) days following completion of the exterior.

SECTION 12. INSPECTION OF WORK. The ACC or its duly authorized representative shall have the right, not the obligation, to inspect any Improvement to Property at any time before or after completion, provided that the right of inspection shall terminate once the Improvement to Property becomes occupied.

SECTION 13. NOTICE OF NONCOMPLIANCE. If, as a result of inspections or otherwise, the ACC finds that any Improvement to Property has been constructed or undertaken without obtaining the approval of the ACC, or has been completed other than in strict conformity with the description and materials furnished by the Applicant to the ACC, or has not been completed within the required time period after the date of approval by the ACC, the ACC shall notify the Applicant in writing of the noncompliance ("Notice of Noncompliance"). The Notice of Noncompliance shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance within the reasonable period of time set forth therein.

SECTION 14. APPEAL TO RESIDENTIAL BOARD OF FINDING OF NONCOMPLIANCE. If the ACC gives any Notice of Noncompliance, the Applicant may appeal to the Residential Board by giving written notice of such appeal to the Residential Board and the ACC within thirty (30) days after receipt of the Notice of Noncompliance by the Applicant. Additionally, if, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance ("Violator"), the ACC shall request a finding of noncompliance by the Residential Board by giving written notice of such request to the Association and the Violator within thirty (30) days after delivery to the Violator of a Notice of Noncompliance from the ACC. In either event, the Residential Board shall hear the matter with reasonable promptness after reasonable notice of such Notice and Hearing to the Violator and the ACC and shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof and required corrective action. The decision of the Residential Board shall be final and binding on all Persons.

SECTION 15. CORRECTION OF NONCOMPLIANCE. If the Residential Board determines that a noncompliance exists, the Violator shall remedy or remove the same within a period of not more than forty-five (45) days from the date of receipt by the Violator of the ruling of the Residential Board. If the Violator does not comply with the Residential Board ruling within such period, the Residential Board may,



at its option but with no obligation to do so, (a) record a Notice of Noncompliance against the real property on which the noncompliance exists in the Official Public Records of Real Property of Harris County, Texas; (b) remove the nonconforming Improvement to Property; and/or (c) otherwise remedy the noncompliance (including, if applicable, completion of the Improvement in question), and, if the Residential Board elects to take any action with respect to such violation, the Violator shall reimburse the Association upon demand for all expenses incurred therewith. If such expenses are not promptly repaid by the Violator to the Residential Association, the Residential Board may levy a Reimbursement Assessment for such costs and expenses against the Violator. The permissive (but not mandatory) right of the Residential Association to remedy or remove any noncompliance (it being understood that no Owner may require the Residential Board to take such action) shall be in addition to all other rights and remedies that the Residential Association may have at law, in equity, under this Declaration, or otherwise.

SECTION 16. NO IMPLIED WAIVER OR ESTOPPEL. No action or failure to act by the ACC or by the Residential Board shall constitute a waiver or estoppel with respect to future action by the ACC or the Residential Board, with respect to any Improvement to Property. Specifically, the approval by the ACC of any Improvement to Property shall not be deemed a waiver of any right or an estoppel against withholding approval or consent for any similar Improvement to Property or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement to Property by such Person or otherwise.

SECTION 17. POWER TO GRANT VARIANCES. The ACC may authorize variances from compliance with any of the provisions of this Declaration (except for the provisions relating to single family residential use), including restrictions upon placement of structures, the time for completion of construction of Improvements to Property, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or other relevant considerations may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the ACC or by its Designated Representative. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided, however, that the granting of a variance shall

not operate to waive any of the provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall the granting of any variance affect the jurisdiction of the ACC other than with respect to the subject matter of the variance, nor shall the granting of a variance affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the property concerned.

SECTION 18. COMPENSATION OF ACC. The members of the ACC shall be entitled to reimbursement by the Residential Association for reasonable expenses incurred by them in the performance of their duties as the Residential Board from time to time may authorize or approve.

SECTION 19. RECORDS OF ACTION. The ACC shall report in writing to the Residential Board all final action of the ACC and the Residential Board shall keep a permanent record of such reported action.

SECTION 20. ESTOPPEL CERTIFICATES. The Residential Board, upon the reasonable request of any interested party and after confirming any necessary facts with the ACC, shall furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance therewith. Any Person, without actual notice of any falsity or inaccuracy of such a certificate, shall be entitled to rely on such certificate with respect to all matters set forth therein.

SECTION 21. INDEMNITY FOR ACC ACTION. None of the members of the ACC, no Designated Representative, the Association, no member of the Residential Board, nor Declarant shall be liable for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the ACC, except to the extent caused by the willful misconduct or bad faith of the party to be held liable. In reviewing any matter, the ACC shall not be responsible for reviewing, nor shall its approval of an Improvement to Property be deemed approval of, the Improvement to Property from the standpoint of safety, whether structural or otherwise, or conformance with building codes, or other governmental laws or regulations. Furthermore, none of the members of the ACC, no Designated Representative, no member of the Residential Board, nor Declarant shall be personally liable for debts contracted for or otherwise incurred by the Residential Association or for any torts committed by or on behalf of the Residential Association, or for a tort of another of such individuals, whether such other

individuals were acting on behalf of the Residential Association, the ACC, the Residential Board, or otherwise. Finally, neither Declarant, the Residential Association, the Residential Board, the ACC, nor their officers, agents, members, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements, or portion thereof, or for failure to repair or maintain the same.

SECTION 22. CONSTRUCTION PERIOD EXCEPTION. During the course of actual construction of any permitted structure or Improvement to Property, and provided construction is proceeding with due diligence, the ACC may temporarily suspend the provisions of Article VI, Section 10 contained in this Declaration as to the property upon which the construction is taking place to the extent necessary to permit such construction; provided, however, that during the course of any such construction, nothing shall be done that will result in a violation of any of the provisions of this Declaration upon completion of construction or that will constitute a nuisance or unreasonable interference with the use and enjoyment of other property within the Properties.

## ARTICLE VII

### ARCHITECTURAL RESTRICTIONS

SECTION 1. AIR CONDITIONERS. No window, roof or wall-type air conditioner that is visible from any street or any other Lot, shall be used, placed or maintained on or in any Dwelling Unit, garage or other Improvement.

SECTION 2. ANTENNAS. Subject to Architectural Review Approval in advance of installation, exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind be placed, erected, constructed or free standing, on any Lot, so as not to be visible from the fronting street or driveway. The Declarant and/or the Residential 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 Properties. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any Lot that unreasonably interferes with the reception of television or radio signals upon any other Lot. The guidelines adopted by the Committee shall from time to time maintain compliance with respective governmental jurisdiction(s).

SECTION 3. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, AND SIMILAR ITEMS. No

artificial vegetation or permanent flagpoles shall be permitted on the exterior of any portion of the Properties. No exterior sculpture, fountains, flags and temporary flagpoles, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved by the ACC.

SECTION 4. CARPORTS/GARAGES. No carports shall be constructed on any Lot. With the prior written consent of the ACC, a porte cochere may be approved; however this will be required in addition to garage. All garages shall be first approved by the ACC and shall be: (a) fully operable; (b) capable of housing at least two (2) automobiles; and, (c) enclosed by garage doors which must be kept in the closed position when the garage is not being used by the Owner or occupant. The garage portion of any model home may be used by Builders for sales purposes, storage purposes, and other related purposes. Upon (or before) the sale of any such model home to the first purchaser thereof, the garage portion of the model home shall be converted to a fully enclosed garage capable of housing not less than two or more than four, automobiles, with garage doors by the Builder. If the garage portion of the model home is not converted to a fully enclosed garage with garage doors by the Builder upon the sale of such model home, it shall be the obligation of the first purchaser of the model home and each subsequent Owner of the Lot (if not done by the first purchaser) to convert the garage portion of the model home to a fully enclosed garage with garage doors.

SECTION 5. DISPOSAL UNITS. Each kitchen in each residence shall be equipped with a garbage disposal unit in a serviceable condition.

SECTION 6. DRAINAGE. No owner of a lot shall be permitted to construct Improvements on such Lot or grade such Lot or permit such Lot to remain in or be placed in such condition that rain water falling on such Lot drains to any other Lot or the Common Area.

SECTION 7. DRAINAGE AND SEPTIC SYSTEMS. Catch basins and drainage areas are for the purposes of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or redefine the drainage flows after location and installation of drainage swells, storm sewers, or storm drains. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. Septic tanks and drain fields, other than those installed by or with the consent of the Declarant, are prohibited

within the Properties. No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any drainage ditch, stream, pond or lake within the Properties.

SECTION 8. DRIVEWAYS. With ACC approval each Lot shall have driveway access to an abutting alley or street on which the Dwelling Unit constructed thereon abuts. Subject to the foregoing limitations, the Owner of each Lot shall construct and maintain at his expense a driveway from his garage to an abutting street or alley.

SECTION 9. DWELLING UNIT SIZE. For all Lots, the minimum total floor area of any Dwelling Unit, exclusive of porches and garages, shall contain not less than one thousand three hundred (1,300) square feet, save and except those Lots as provided for in the Second Amendment to Declaration of Covenants, Conditions and Restrictions for Clayton Park as recorded with Harris County Clerk's office File No. R429305 in the Real Property Records of Harris County, Texas, which permit up to seven (7) Dwelling Units out of the Unrestricted Reserve B of Clayton West to be constructed of a minimum of One thousand two hundred (1,200) square feet of total floor area, exclusive of porches and garage.

SECTION 10. ENFORCEMENT OF EXTERIOR DWELLING OR LOT MAINTENANCE. In the event of the violation of any covenant herein by any Owner or occupant of any Lot and the continuance of such violation after ten (10) days written notice thereof, or in the event the Owner or occupant has not proceeded with due diligence to complete appropriate repairs and/or maintenance after such notice, Declarant or the Residential Association shall have the right (but not the obligation), through its agents or employees, to enter upon such Lot and to secure compliance with these restrictions and restore such Lot to a neat, attractive, healthful and sanitary condition. The Declarant or the Residential Association may render a statement of charge to the Owner of such Lot for the cost of such work. The Owner agrees by the purchase or occupation of the Lot to pay such statement immediately upon receipt. In the event of the failure to pay for such work, the amount of such statement may be added to the annual maintenance charge provided for herein and shall be secured by a lien on the Lot in the same manner as such annual assessment. The Declarant, the Residential Association, or their agents and employees shall not be liable, and are hereby expressly relieved from any liability, for trespass or other tort in connection with the performance of the maintenance and other work authorized herein.

SECTION 11. EXTERIOR LIGHTING. All exterior lighting in front of dwellings must first be approved by the ACC.

SECTION 12. FLAGPOLES. No flagpole shall be permanently erected on any Lot. Temporary flagpole(s) approved by the ACC may be erected on a Lot or in Common Areas.

SECTION 13. GRASS, SHRUBBERY AND LANDSCAPING. Prior to the initial sale thereof, the front of each Lot with a residence thereon must be solid sod with grass, and all areas visible from any street must be landscaped with shrubbery or ground cover approved by the ACC. All grass, plant beds and shrubbery shall be maintained by the Owner of the Lot. Each Lot shall have a minimum of two (2) trees in the front portion of the Lot. Solid rock scapes and/or concrete in lieu of grass or ground cover and visible from the street or alley on any lot is prohibited.

SECTION 14. HEIGHT AND CHARACTER OF DWELLING UNIT. No Dwelling Unit shall be erected, altered, or permitted to remain on any Lot other than one Dwelling Unit used for single family residential purposes only, not to exceed two (2) stories in height, and a fully enclosed garage, and other bona fide servants' quarters; provided, however, that the servants quarters' structure may not exceed the main dwelling unit in height. Provided further that it shall be permissible to have third-level living space in the Dwelling Unit completely under a sloped roof with dormers or gables, or additional levels beneath ground level in the Dwelling Unit, garage, or servants' quarters, so long as the maximum height of the buildings does not exceed forty-five (45) feet.

SECTION 15. LOCATION OF DWELLING UNIT. Except as may be authorized in writing by the ACC, no Dwelling Unit or Improvement shall be located nearer to the front Lot line nor nearer to any side or rear Lot line than as permitted by the recorded plat of the Subdivision. To provide for uniformity and proper utilization of the building area within the Lots, residences or appurtenant structures on a Lot shall not be less than ten (10) feet from the residence or appurtenant structure on any contiguous Lot(s).

SECTION 16. ZERO LOT LINE OPTION. (a) Placement. the front building setback line shall be as hereinabove required. Each residence dwelling shall be designed so as to provide that a minimum of fifty percent (50%) of the linear distance of one (1) wall of the residence structure shall be constructed adjacent to and abutting a side lot line. Such side lot line where there is such construction shall be hereinafter referred to the "Zero Lot Line." Provided however, that an open court or patio may be built

adjacent and abutting the aforementioned Zero Lot Line , but said open court or patio must be enclosed by a masonry or wood wall having a minimum height of eight (8) feet. This wall must, as is the case with the residence wall, be constructed adjacent to the abutting Zero Lot Line and enclosed the court or patio in such a manner as to appear to be an extension of the residence dwelling. The Zero Lot Line walls shall have no exterior objects or appurtenances such as, for example, there shall be no electric panels, vents, plumbing clean outs,, windows or opening of any kind unless such Zero Lot Line side is on the street side of the corner lot. If the Zero Lot Line is on the street side of corner lot, normal opening and exterior appurtenances may be constructed on the dwelling abutting the Zero Lot Line. There is hereby established a six (6) foot minimum distance between the Zero Lot Line and the residence dwelling situated upon the adjoining Lot. No dwelling shall be located on any Lot within any Utility Easement along the rear lot line.

(b) Zero Lot Line Access Easement. Upon the election of Declarant, its successors and/or assigns of the Zero Lot Line Option, as evidenced by completion on a Lot of construction of any residence complying therewith, each such lot shall have an access easement not less than three (3) feet in width extending the entire depth of the lot from front to back abutting and parallel to the Zero Lot Line wall, over, on and across the adjacent lot for the construction, repair, and maintenance of improvements located on the Zero Lot Line. Conditions and use of the Zero Lot Line Access easement are hereby declared and established by and between the owner of the Zero Lot Line lot and the owner of the adjacent lot, which shall be covenants running with the land and binding both of the above-mentioned owners and all of the respective heirs and assigns forever; to wit:

(i) The Zero Lot Line lot owner must replace any fencing, landscaping or other items on the adjacent lot that he may be disturbing during construction, repair, or maintenance.

(ii) This easement, when used by the Zero Lot Line lot owner for such construction, repair or maintenance, must be left clean and unobstructed unless the easement is actively being utilized and any items removed must be replaced.

(iii) The Zero Lot Line lot owner must notify the owner of the adjacent lot to his intent to do any construction, repair or maintenance upon the Zero Lot Line wall at least twenty -four (24) hours

prior to starting any work, with the hours that such access easement may be utilized being between 8:00a.m. and 5:00p.m., Monday thru Friday, and 9:00a.m. through 6:00p.m. on Saturday.

(iv) Both the Zero Lot Line lot owner and the adjacent lot owner shall have the right of surface drainage over, along and upon the access easement area. Neither owner shall use the access easement area in such a manner as will interfere with such drainage.

(v) Neither owner shall attach any object to the Zero Lot Line wall, facing onto the access easement area and the owner of the adjacent lot will not use the Zero Lot Line wall as a playing surface for any sport. In addition, no structure shall be constructed or placed upon the access easement area by either owner, except the roof overhang and guttering as provided for above, and a fence by the owner of the adjacent lot, which allows drainage; however, access to the access easement must be preserved for the owner of the Zero Lot Line lot.

(c) Equal Set Back Option. the front setback line shall be as hereinabove required. Each residence dwelling shall not be located on the Lot nearer than three,(3) feet from either side property line, nor nearer to the rear property line than the width of the utility easement on the Lot as shown on the recorded plat. It is further provided that each Lot or parcel in the subdivision shall be subject to an easement for minor(one foot or less) encroachments created by construction, settling, overhangs, brick ledges, fences, or other protrusions constructed by the Declarant or Lot Owner as long as it stands, and shall and does exist. In the event any dwelling in the subdivision is partially or totally destroyed, and the rebuilt, the owners affected agree that minor encroachments onto adjacent property due to the construction, reconstruction, or repair shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

SECTION 17. MAILBOXES. Mailboxes, cluster mailboxes and/or house numbers approved by the U.S. Postal Service, shall be incorporated within the community and must be harmonious with the overall character and aesthetics of the community.

SECTION 18. PLAYGROUND. Jungle gyms, swing sets or similar playground equipment shall be erected or installed so as not to be visible from any street or alley. Any playground or other play areas or equipment furnished by the Association or erected within the Common Area shall be used at the



risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

SECTION 19. POOLS. No above-ground swimming pools (except children's non-permanent wading pools or the like) shall be erected, constructed or installed on any Lot.

SECTION 20. PRIVATE UTILITY LINES. All electrical telephone and other utility lines and facilities which are located on a Lot and which are not owned and maintained by a governmental entity or a public utility company shall be installed in underground conduits or other underground facilities unless otherwise approved in writing by the ACC, and shall be maintained at all times by the Owner of the Lot upon which same is located.

SECTION 21. ROOFS. Unless otherwise approved in writing by the ACC, the roofs of all buildings on a Lot shall be covered with fiberglass composition shingles with a life of twenty (20) years or better, and shall, at a minimum, meet the minimum specifications as defined by the Federal Housing Authority. The color of any composition shingles shall, like all other specifications to Improvements, be subject to written approval by the ACC prior to installation. Any other type roofing material may be used only if approved in writing prior to installation. Additionally, to further maintain exterior harmony, all chimneys must be finished with a masonry material.

SECTION 22. WALKWAYS. Before the construction of any residence is complete, the Builder shall construct and the Owner shall maintain a concrete walk three (3') feet in width connecting the front door of the dwelling to the street. Other walkways may be constructed for the benefit of walking paths within the lot, however, no walkway may exceed a three (3') foot width and must be approved prior to such construction. Curb sections adjacent to the street right of way, other than the driveway portion connecting to the street, are the maintenance responsibility of the Association.

SECTION 23. SIGNS. No signs, billboards, posters or advertising devices of any kind shall be permitted on any Lot without the prior written consent of the ACC, other than (a) one sign of not more than six (6) square feet advertising the particular Lot on which the sign is situated for sale or rent, or (b) one sign of not more than six (6) square feet to identify the particular Lot during the period of actual construction of a single family residential structure thereon. The right is reserved by Declarant to construct and maintain, or to allow Builders within the Properties to construct and maintain, signs,

billboards and advertising devices as is customary in connection with the sale of newly constructed residential dwellings. In addition, the Declarant and the Residential Association shall have the right to erect identifying signs at each entrance to the Properties.

SECTION 24. SOUND DEVICES. No horns, whistles, bells, or other sound devices, except for security systems used exclusively to protect the Dwelling Unit, shall be placed or used on any Lot or Improvements. This paragraph shall not preclude the use of outdoor speakers for hi-fis, stereos, or radios if the sound level is maintained at a reasonably low level with respect to adjoining property.

SECTION 25. SUPPLEMENTAL DECLARATIONS. In addition to the covenants, conditions, and restrictions herein set forth, Declarant may impose additional restrictions on the Lots, or certain of the Lots, by Supplemental Declaration as long as Declarant is the Owner of the affected property or, if Declarant is no longer the Owner, with the consent of the Owner or Owners.

SECTION 26. TEMPORARY BUILDINGS. Except as may be permitted by the Declarant or the ACC during initial construction within the Properties, no tent, shack, mobile home, motor home or any other vehicle or structure of a temporary nature shall be placed upon a Lot or any part of the Properties. Declarant may permit temporary toilet facilities, sales and construction offices, and storage areas to be used by Builders in connection with the construction and sale of residences. Builders in the Properties may use garages as sales offices for the time during which such Builders are marketing homes exclusively located within the Properties. At the time of the sale of a residence by a Builder, any garage appurtenant to such residence used for sales purposes must be converted to a garage capable of housing a minimum of two (2) full-size automobiles. This section does not exclude approval of accessory or outbuildings used for the purpose of storage (i.e. lawn equipment, etc.) which may be permitted subject to approval of the ACC. Accessory and/or outbuildings are limited to one (1) structure per Lot. Additionally, accessory or outbuildings shall be limited in height to eight (8') at the center ridge of the roof and must be positioned on the Lot behind the primary dwelling so as not to be visible from the fronting street or side street if it is a corner Lot. Materials used for construction and paint color shall be the same or as close as possible to the primary dwelling.

SECTION 27. TRAFFIC SIGHT AREAS. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the Street shall be permitted to remain

on any Corner Lot within fifteen (15) feet of the point formed by the intersection of the building set back lines of such Lot.

SECTION 28. TYPE OF CONSTRUCTION. Unless otherwise approved by the ACC, at least fifty-one percent (51%) of the total exterior wall area of each and every residence, excluding detached garages, but not attached garages, gables, windows, and door openings, must be of masonry, stucco or brick veneer. Every garage and accessory building shall correspond in style and architecture with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. An approved accessory structure may not exceed an overall height of eight feet (8') at the center roof line and must be positioned on the Lot behind the primary dwelling so as not to be visible from the fronting street (or side street in the event of a Corner Lot).

SECTION 29. TYPE OF RESIDENCE. Unless the ACC grants a variance pursuant to Section 7 of this Article VII, only one detached single family residence containing not more than two stories and an accessory outbuilding shall be built or permitted on each Lot. All residences shall have an attached or detached enclosed garage capable of housing a minimum of two (2) full-size automobiles. All structures shall be of new construction built in accordance with plans and specifications approved by the ACC pursuant to the Declaration(s), and no structure shall be moved from another location onto any Lot. All residences and approved accessory outbuildings must be kept in good repair and must be painted when necessary to preserve their attractiveness. For purposes hereof, a porte cochere shall not be considered a carport and may be permitted.

SECTION 30. USE OF TEMPORARY STRUCTURES. No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn, or other outbuilding shall be maintained or used on any Lot at any time as a residence, or for any other purpose, either temporarily or permanently; provided, however, that Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may seem necessary or convenient while selling Lots, selling or constructing residences, or constructing other Improvements within the Properties.

The right to use temporary structures in connection with the construction of Improvements may be assigned from time to time, in whole or in part, by Declarant to Builders.

All approved accessory outbuildings shall be properly maintained at all times and limited to use for purposes such as typical household storage, greenhouse purposes or other similar type use.

SECTION 31. VARIANCE. The ACC may authorize variances from compliance with any of the restrictions set forth in this Article VII when circumstances such as topography, natural obstructions, construction hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) estop the ACC from denying a variance in other like circumstances, regardless of its location within the subdivision. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing, shall not be considered a hardship warranting a variance.

SECTION 32. WALLS, FENCES AND HEDGES. No hedge in excess of three feet (3') in height shall be erected or maintained nearer to the front Lot line than the building set-back line adjacent to the front wall of the dwelling existing on such Lot. No side or rear fence or wall shall be more than eight feet (8') nor less than six feet (6') in height. All fences and walls shall be of cedar construction or better. No fence or wall shall be erected on any Lot nearer to the Street than the building setback lines as shown on the Plat. The ACC has the right to deviate its approval for the style and materials to be used based on the location within the subdivision. It is the intent of Declarant to maintain visual continuity especially along entryways and/or main thoroughfares and/or adjacent to Common Area.

SECTION 33. WINDOW TREATMENT. No window in any Dwelling Unit or other Improvement that is visible from any other Lot or a street may be covered with any aluminum foil or other reflective material. Window coverings must be compatible with the design and color of the Dwelling Unit and the overall appearance of the Neighborhood. The ACC shall have the sole authority to determine whether particular window coverings are compatible with the design and color of the Dwelling Unit and the Community-Wide Standard.

**ARTICLE VIII**  
**USE RESTRICTIONS**

**SECTION 1. ANIMALS AND LIVESTOCK.** No animals, livestock, poultry or swine of any kind shall be raised, bred, or kept on any Lot. Consistent with its use as a residence, a maximum of two (2) dogs, cats, or other traditional household pets (exclusive of aquarium fish, parakeets, or other-caged pets) may be kept on a Lot, provided that they are not kept, bred, or maintained for any business purposes.

**SECTION 2. DISPOSAL OF TRASH.** No trash, rubbish, garbage, manure, debris, or offensive material of any kind shall be kept or allowed to remain on any Lot, nor shall any Lot be used or maintained as a dumping or storage ground for such materials. All such matter shall be placed in sanitary refuse containers constructed of metal, plastic or masonry materials with tight fitting sanitary covers or lids and placed in an area adequately screened by planting or fencing. Equipment used for the temporary storage and/or disposal of such material prior to removal shall be kept in a clean and sanitary condition and shall comply with all current laws and regulations and those which may be promulgated in the future by any federal, state, county, municipal or other governmental body with regard to environmental quality and waste disposal. In a manner consistent with good housekeeping, the owner of each Lot shall remove such prohibited matter from his Lot at regular intervals at his expense.

**SECTION 3. LOT MAINTENANCE.** The Owners and Occupants of all Lots shall at all times keep all weeds and grass thereon cut in the sanitary, healthful and attractive manner and shall in no event use any Lot for storage of materials and equipment except for normal residential requirements or incident to construction of improvements thereon as herein permitted. The drying of clothes in public view is prohibited. If outside drying of clothes is desired, the Owner or Occupant desiring outside drying shall construct and maintain a fenced drying yard or other suitable enclosure to screen drying clothes from public view. Similarly, all yard equipment, wood piles, or storage piles shall be screened by a fenced service yard or other similar facilities so as to conceal them from view from neighboring Lots, any street or other property. No Lot shall be used or maintained as a dumping ground for trash, nor will the accumulation of garbage, trash or rubbish of any kind thereon permitted. Burning of trash, garbage, leaves, or grass is not permitted. Trash, garbage or other waste materials shall be kept in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for

the storage or disposal of waste materials resulting from construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay, until the completion of the improvements, after which these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. In the event of default on the part of the Owner or occupant of any Lot in observing any of the above requirements, and such default continues unresolved for ten (10) days after written notice thereof is mailed to the last known address of the Owner involved, (without the requirement of certification), Declarant or any employee, agent or contractor of the Association may, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause to be cut such weeds, and grass, and remove or cause to be removed such garbage, trash and rubbish, or do any other reasonable thing necessary to restore compliance with the restrictions so as to place said Lot in a neat, attractive, healthful and sanitary condition, and such Lot is subject and be recognized as a reimbursement assessment. The Association, shall have the right, but not the obligation to contract or arrange for regular garbage pick-up service for the Lot Owners. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of the residence on a Lot to pay for such work or service immediately upon receipt of a statement for such services. In the event of the failure to pay such statement, the amount thereof may be added to the annual maintenance charge assessed against such Lot and shall become a charge thereon which shall be collectible in the same manner as the regular annual maintenance charge provided for herein.

SECTION 4. MINERAL PRODUCTION. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

SECTION 5. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to residents of the Properties.

SECTION 6. PERMITTED HOURS FOR CONSTRUCTION ACTIVITY. Except in an emergency or when other unusual circumstances exist, as determined by the Residential Board, outside construction work or noisy interior construction work shall be permitted only between the hours of 6:30A.M. and 9:00 P.M. Monday thru Saturday; on Sunday, work shall be permitted only between 9:00A.M. and 5:00 P.M.

SECTION 7. RESIDENTIAL USE. Each and every Lot is hereby restricted to residential dwellings for single family residential use only. No business, professional, commercial, or manufacturing use shall be made of any of said Lots, even though such business, professional, commercial, or manufacturing use be subordinate or incident to use of the premises as a residence. No structure other than one single family residence and its outbuildings shall be constructed, placed on, or permitted to remain on any Lot in the Properties. As used herein, the term "residential use" shall be construed to prohibit the use of any Lot for duplex houses, apartment houses, or mobile homes.

SECTION 8. STORAGE AND REPAIR OF VEHICLES. Without limitation of description, no boat, boat trailer, boat rigging, motor home, trailer, mobile home, truck larger than a one ton pick-up, bus, inoperable automobile, or any style camper shall be parked or kept in the street in front of or side of any Lot or on any Lot unless such vehicle is stored within a garage or otherwise screened from public view; provided, however, boats, boat trailers, boat riggings, motor homes, trailers, and campers may be temporarily parked in the street in front of or side of any Lot or on any Lot (for the benefit of loading and unloading, as is normal for use) for a period not to exceed seventy-two hours. No Owner of any Lot or any visitor or guest of any Owner shall be permitted to perform work on automobiles or other vehicles in driveways or streets other than work of a temporary nature. For the purposes of the foregoing the term "temporary" shall mean that the vehicle shall not remain in driveways or streets in excess of seventy-two (72) hours.

SECTION 9. STORAGE OF BUILDING MATERIALS. Unless otherwise approved by the Residential Board, no Lot shall be used for the storage of any materials whatsoever, except that material used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced. During initial construction or remodeling of the residences by Builders in the Properties, building materials may be placed or stored outside the property lines. Building materials may remain on Lots for a reasonable time, so long as the construction progresses without undue delay after

which time these materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. Under no circumstances shall building materials be placed or stored on the Streets.

## ARTICLE IX

### EASEMENTS

SECTION 1. EASEMENTS. Easements for the installation and maintenance of utilities are reserved as shown and provided for on the Subdivision Plats or as dedicated by separate instruments. Neither Declarant nor any utility company or authorized political subdivision using the easements referred to herein shall be liable for any damages done by them or their assigns, agents, employees or servants, to fences, shrubbery, trees, flowers, improvements or other property of the Owner situated on the land covered by such easements as a result of construction, maintenance or repair work conducted by such parties or their assigns, agents, employees or servants.

SECTION 2. UNDERGROUND ELECTRICAL DISTRIBUTION SYSTEM. An underground electric distribution system has been installed within the Properties which will be designated an "Underground Residential Subdivision" and which underground service area shall embrace all Lots in the Properties. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained in the Underground Residential Subdivision, the electric service to each Lot therein shall be underground, uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.



Easements for the underground service may be crossed by driveways and walkways provided that the Builder or Owner makes prior arrangements with the utility company furnishing electric service and provides and installs the necessary electric conduit of approved type and size under such driveways or walkways prior to construction thereof. Such easement for the underground service shall be kept clear of all other improvements, including buildings, patios, or other paving, and neither Builder nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, or improvements (other than crossing driveways or walkways provided the conduit has been installed as outlined above) of the owner and located on the land covered by said easements.

SECTION 3. CABLE TELEVISION. Declarant reserves the right to hereafter enter into a franchise or similar type agreement with one or more cable television companies and Declarant shall have the right and power in such agreement or agreements to grant to such cable television company or companies the uninterrupted right to install and maintain communications cable and related ancillary equipment and appurtenances within the utility easements and rights-of-way dedicated by the Subdivision Plats or by separate instruments pertaining to the Properties.

#### **ARTICLE X**

##### **ENFORCEMENT**

The Residential Association, the Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, the covenants, conditions, restrictions, and liens contained herein. Failure of the Residential Association, Declarant, or any Owner to enforce any of the provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **ARTICLE XI**

##### **ANNEXATION OF ADDITIONAL PROPERTY**

SECTION 1. ANNEXATION. The Declarant, as the owner thereof or, if not the Owner, with the consent of the Owner thereof, shall have the unilateral right, privilege, and option at any time to subject any portion of the Aggregate Property, to the provisions of this Declaration and the jurisdiction of the Residential Association by filing for record one or more Supplemental Declarations in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such

Supplemental Declaration unless otherwise provided therein. The rights reserved unto Declarant to subject additional land to this Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such land to this Declaration or to the jurisdiction of the Residential Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such land nor shall such rights in any manner limit or restrict the use to which such land may be put by Declarant or by any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

SECTION 2. OTHER ANNEXATIONS. With the consent of the owner thereof, the Residential Association may annex real property other than the Aggregate Property to the provisions of this Declaration and the jurisdiction of the Residential Association. Such annexation shall require the affirmative vote of two-thirds (2/3) of the total votes of the Members of the Residential Association present at a meeting duly called for such purpose.

Annexation shall be accomplished by filing of record in the public records of Harris County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Residential Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Article X, Section 2 and to ascertain the presence of a quorum at such meeting.

## ARTICLE XII

### GENERAL PROVISIONS

SECTION 1. GENERAL. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the owners of a majority of the Lots in the Properties has been recorded, agreeing to change or terminate the covenants herein, in whole or in part.

SECTION 2. AMENDMENT. Subject to the provisions of Section I of this Article XII, this Declaration may be amended by an instrument executed by the Owners of fifty-one percent (51%) of the Lots in the Properties. Any amendment must be properly recorded in the office of the County Clerk of Harris County, Texas, prior to its becoming effective.

SECTION 3. SEVERABILITY. Invalidity of any one of these covenants by judgment or other court order shall in no wise affect any other provisions, which shall remain in full force and effect except as to any terms and provisions which are invalidated.

SECTION 4. GENDER AND GRAMMAR. The singular wherever used herein shall be construed to mean or include the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations (or other entities) or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

SECTION 5. TITLES. The titles of this Declaration of Articles and Sections contained herein are included for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

SECTION 6. REPLAT. Declarant shall have the right, but shall never be obligated, to subdivide into Lots, by recorded plat or in any lawful manner, any reserve tracts contained within the Properties and such Lots as replat shall be subject to these restrictions as if such Lots were originally included herein.

SECTION 7. MERGER AND CONSOLIDATION. Upon a merger or consolidation of the Residential Association with another nonprofit corporation organized for the same purposes, the Residential Association's properties, rights, and obligations may be transferred to the surviving or consolidated association, or alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Residential Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions and restrictions established by this Declaration, together with the covenants, conditions and restrictions applicable to the properties of the other association as one scheme. However, such merger or consolidation shall not effect any revocation, change or addition to the covenants

established by this Declaration and no merger or consolidation shall be permitted except with the assent of two-thirds (2/3rds) of the total vote of eligible Members of the Residential Association.

**SECTION 8. DISSOLUTION.** The Residential Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3rds) of the total vote of eligible Members. Upon dissolution of the Residential Association, other than incident to a merger or consolidation, the assets of the Residential Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Residential Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

IN WITNESS WHEREOF, this Declaration is executed this 18<sup>th</sup> day of July, 1995. 6

DECLARANT:

THE TIMBERGATE JOINT VENTURE OF TEXAS,  
INC.

By: [Signature]  
Edwin R. Sanford,  
5200 San Felipe  
Houston, Texas 77058

TIMBERGATE HOMEOWNERS'  
ASSOCIATION, INC.

By: [Signature]  
Jim Oster, President  
5200 San Felipe  
Houston, Texas 77058

LEINHOLDER:

RIVERWAY BANK

By: [Signature]  
Bruce Barclay, Vice President

GROUP AMERICA

By: [Signature]  
Dale Couch, ~~President~~ President

GATEWAY HOMES INC. (OWNER)

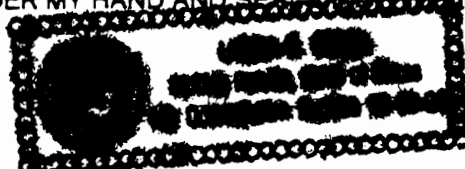
By: [Signature]  
Tyler D. Todd, Vice President

THE STATE OF TEXAS §

COUNTY OF HARRIS §

- Ltd. Partnership

Before me, the undersigned authority, on this day appeared Edwin R. Sanford, Partner of The Timbergate Joint Venture of Texas, ~~Inc.~~ a Texas corporation, and being duly sworn, he acknowledged to me that he executed the foregoing document for the purposes therein expressed, and in the capacity therein stated.

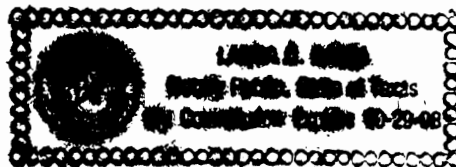
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18<sup>th</sup> day of July, 1995 6

Laurel C. Slussler  
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day appeared Jim Oster, President of TIMBERGATE HOMEOWNERS' ASSOCIATION, INC., a Texas corporation, and being duly sworn, he acknowledged to me that he executed the foregoing document for the purposes therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18<sup>th</sup> day of July, 1995 6

Laurel C. Slussler  
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day appeared Tyler D. Todd, Vice President, of The Gateway Homes Inc. a Texas corporation, and being duly sworn, he acknowledged to me that he executed the foregoing document for the purposes therein expressed, and in the capacity therein stated.

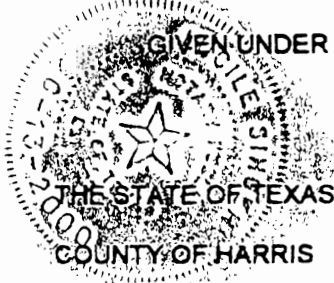
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18<sup>th</sup> day of July, 1995 6 mp

Margaret S. Slussler  
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day appeared Bruce Barclay, Vice President of The Riverway Bank, a Texas corporation, and being duly sworn, he acknowledged to me that he executed the foregoing document for the purposes therein expressed, and in the capacity therein stated.



GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of July, 1995. <sup>6</sup>

*Luride Lopez*  
Notary Public, State of Texas \*

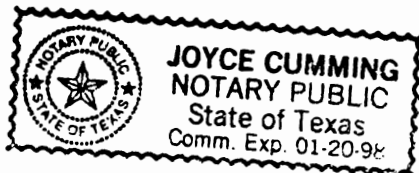
THE STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned authority, on this day appeared Dale Couch, Vice President of The Group America, a Texas corporation, and being duly sworn, he acknowledged to me that he executed the foregoing document for the purposes therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18th day of July, 1995. <sup>6</sup>

*Joyce Cumming*  
Notary Public, State of Texas



ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
THE STATE OF TEXAS }  
COUNTY OF HARRIS }  
I hereby certify that this instrument was FILED in File Number  
Sequence on the date and at the time stamped hereon by me; and was  
duly RECORDED, in the Official Public Records of Real Property of  
Harris County, Texas on,

JUL 23 1996



*Beverly B. Kaufman*  
COUNTY CLERK  
HARRIS COUNTY TEXAS

FILED  
96 JUL 23 PM 1:51  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

H:\TMBRGATE\MINUTES\CCRFINAL 995  
071796\CMF

41

RECORDER'S MEMORANDUM  
ALL BLACKOUTS, ADDITIONS AND CHANGES  
WERE PRESENT AT THE TIME THE INSTRUMENT  
WAS FILED AND RECORDED.

RETURN TO:  
KIM WILLIAMS  
P. O. Box 1504  
Houston, TX 77251-1504