AFTER RECORDING RETURN TO:
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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FROST OAKS, DESOTO, TEXAS

**THIS DECLARATION** is made as of the 14 day of Sept, 1992, by FROST OAKS JOINT VENTURE, a Texas joint venture (hereinafter referred to as "Declarant").

## W I T N E S S E T H :

**WHEREAS,** Declarant is the owner of all of the real property referred to in Article II hereof and described on Exhibit "A", attached hereto and made a part hereof for all purposes, and desires to create thereon a residential community with landscaping, sprinkler systems, streets, drives, screening walls and other common improvements for the benefit of the community; and

**WHEREAS,** Declarant desires to provide for, among other matters, the preservation of the values and amenities in said community and for the maintenance of said landscaping, sprinkler systems, streets, drives, screening walls and other common improvements; and, to this end, desires to subject the real property referred to in Article II together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

**WHEREAS,** Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which would be delegated and assigned the powers of (i) maintaining and administering the Common Properties and facilities, (ii) administering and enforcing the covenants and restrictions, and (iii) collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS,** Declarant has caused to be incorporated under the laws of the State of Texas a non-profit corporation for the purpose of effecting the intents and objectives herein set forth.

**NOW, THEREFORE,** Declarant declares that the real property referred to in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

## ARTICLE I
## DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the vehicle and agency which will have the power, duty and responsibility of maintaining and administering the Common Properties, and collecting the disbursements and charges hereinafter prescribed, and will have the right of administering and enforcing the Covenants and Restrictions. The Association shall, commencing on the date of recordation of this Declaration and continuing for an indefinite period of time, exist as an unincorporated association and at a point in time deemed appropriate by the Declarant, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the incorporation of the Association as a non-profit corporation under the laws of the State of Texas.

(b) "Properties" shall mean and refer to all such existing properties as are subject to this Declaration as described on Exhibit "A" attached hereto and any additions to such Properties.

(c) "Common Properties" shall mean and refer to, as examples, and not by way of limitation (i) those certain streets, drives, street lights, street signs, traffic control devises, parkway areas, landscaped medians, landscaping improvements, plantings, screening walls, sprinkler systems and easements, which improvements are intended to be devoted to common use and enjoyment; and (ii) any areas of land, improvements or other property rights within the Properties which are known, described or designated or which shall subsequently become

known, described or designated as Common Properties intended for or devoted to the common use and enjoyment of the members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon. In certain circumstances Common Properties may not be owned by the Declarant or the Association in fee, but may, in some instances, be held as an easement, be leased or may simply be areas of land that are not owned or leased by the Declarant or the Association but which are maintained by the Association or the Declarant for the use and benefit of the Members and the Properties. An example of areas of Common Property which may not be owned or leased by the Association or Declarant but would constitute a portion of the Common Properties and be maintained by the Association would be landscaped parkways and medians within public rights-of-way within or appurtenant to the Properties. The Declarant may hold record title to the Common Properties, consistent with the objectives envisioned herein and subject to the easement rights herein of the Members to use and enjoy the Common Properties, for an indefinite period of time and at a point in time (deemed appropriate and reasonable by the Declarant) after the Association has been incorporated, record title to those portions of the Common Properties which are owned by Declarant in fee, as an easement or otherwise will be transferred from the Declarant to the Association.

(d) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map(s) or Plat(s) of the Properties, as amended from time to time, which is designated as a lot therein and which is or will be improved with a residential dwelling. Some portions of the Common Properties may be platted as a "lot" on the recorded subdivision plat, however, these lots shall be excluded from the concept and definition of lot as used herein.

(e) "Owner" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenant of record to assessment by the Association, including contract sellers. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

(f) "Member" shall mean and refer to each Owner as provided in Article III.

(g) "Declarant" shall mean and refer to FROST OAKS JOINT VENTURE, a Texas joint venture, and the successors and assigns (if any) of such joint venture, with respect to the voluntary disposition of all (or substantially all) of the assets of such joint venture and/or the voluntary disposition of all (or substantially all) of the right, title and interest of the joint venture, in and to the Properties prior to the completion of development thereon, where such voluntary disposition of right, title and interest expressly provides for the transfer and assignment of the rights of such joint venture as Declarant, or with respect to the



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involuntary disposition of all or any part of the Properties owned by Declarant. No person or entity purchasing one or more Lots from such joint venture in the ordinary course of business shall be considered as "Declarant".

## ARTICLE II
## PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

**2.01 Existing Properties.** The Properties which are, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration are located in DeSoto, Dallas County, State of Texas, and are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

**2.02 Additions to Properties.** Additional land(s) may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the Covenants and Restrictions of this Declaration to such property; provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not materially inconsistent with this Declaration in a manner which adversely affects the concept of this Declaration.

(b) In the event any person or entity other than the Declarant desires to add or annex additional residential and/or common areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the majority of the outstanding votes within each voting class of the Association.

(c) Any additions made pursuant to Paragraphs (a) and (b) of this Section 2.02, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the properties added.

(d) The Declarant shall have the right and option [without the joinder, approval or consent of any person(s) or entity(ies)] to cause the Association to merge or consolidate with any similar association then having jurisdiction over real property located (in whole or in part) within one-half (1/2) mile of any real property then subject to the jurisdiction of the Association. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or

consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme.

(e) Notwithstanding the fact that the Declarant may not be a Class A or Class B Member by virtue of its sale, transfer or conveyance of all of its right, title, and interest in the Property, the Declarant shall continue, to be entitled to implement and exercise all its rights under and pursuant to this Section 2.02 and all of the subsections hereof. Even though the Declarant may not be a Class A or Class B Member prior to an annexation, merger or consolidation permitted by this Section 2.02, subsequent to such annexation, merger or consolidation the Declarant shall be and become a Class B Member with respect to the Lots owned by it within the Property, as each Property has been expanded or increased by the annexation, merger or consolidation. The Declarant's rights as a Class B Member shall be governed by and set forth in the Declaration for the Property and the Articles of Incorporation and Bylaws of the Association as same may be amended or altered by and in accordance with the annexation, merger or consolidation.

## ARTICLE III
## MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

**3.01 Membership.** Every Owner of a Lot shall automatically be a Member of the Association.

**3.02 Classes of Membership.** The Association shall have two (2) classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and 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 such Lot.

CLASS B. Class B Members shall be Declarant. Declarant shall be entitled to two (2) votes for each Lot owned by Declarant. The Class B membership shall cease, and Declarant shall become a Class A Member, upon the earlier to occur of the following:

(i) when the total number of votes outstanding in the Class A membership is two (2) times greater than the total number of votes outstanding in the Class B membership; or

(ii) on the tenth (10th) anniversary of the date the Declaration was recorded in the Office of the County Clerk of Dallas County, Texas.

Notwithstanding the voting rights within the Association, until the Declarant no longer owns record title to any Lot or the tenth (10th) anniversary of the recording date for this Declaration, whichever occurs first in time, the Association shall take no action with respect to any matter whatsoever without the consent and approval of the Declarant.

**3.03 Quorum, Notice and Voting Requirements.**

(a) Subject to the provisions of Paragraph (c) of this section, any action authorized by Sections 5.04 and 5.05(a) of Article V shall require the assent of the majority of all of the votes of those who are voting in person or by proxy, regardless of class, at a meeting duly called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than fifty (50) days in advance and shall set forth the purpose of such meeting.

(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

At the initial meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all of the votes of the Association, regardless of class, shall constitute a quorum. If the required quorum is not present at the meeting, one additional meeting may be called, subject to the notice requirement hereinabove set forth, and the required quorum at such second meeting shall be one-half (1/2) of the required quorum at the preceding meeting; provided, however, that no such second meeting shall be held more than sixty (60) days following the first meeting.

(c) As an alternative to the procedure set forth above, any action referred to in Paragraph (a) of this Section may be taken without a meeting if a consent in writing, approving of the action to be taken, shall be signed by all Members.

(d) During the period of time that the Association is unincorporated, the Declarant shall have the sole right and option to prescribe reasonable procedures for the meetings (if any) of the Members; provided, however, that prior to incorporation, without the approval of the Declarant, no Member (other than Declarant) shall have a right to vote on any matter, or to call any meetings of the Members of the Association. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association (as an incorporated entity) shall be consistent with its Articles of Incorporation and Bylaws, as same may be amended from time to time.

## ARTICLE IV
## PROPERTY RIGHTS IN THE COMMON PROPERTIES

**4.01 Members' Easements of Enjoyment.** Subject to the provisions of Section 4.03 of this Article, every Member and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a right and easement of use and enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Properties.

**4.02 Title to the Common Properties.** The Declarant shall dedicate and convey the fee simple title to the Common Properties to the Association at such point in time deemed reasonable and appropriate by the Declarant. Prior to the date the Common Properties are conveyed to the Association, the Declarant shall retain the right to (i) sell portions of the Common Properties to Lot Owners or (ii) dedicate or transfer all or any part of the Common Properties to a public agency, authority or utility company, if Declarant, in its sole discretion, deems such sale to be for the best interest of the development.

**4.03 Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties.

(b) Liens of mortgages placed against all or any portion of the Common Properties with respect to monies borrowed by the Declarant to develop

and improve the Common Properties or by the Association to improve or maintain all or any portion of the Common Properties;

(c) The right of the Association to enter into and execute contracts with third parties (including the Declarant, or an affiliate of the Declarant) for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure;

(e) The right of the Association, as may be provided in its Bylaws, to suspend the voting rights of any Member for any period during which any assessment against a Lot owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(f) The right of the Declarant to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility company;

(g) The right of the Declarant, at any time, to make such reasonable amendments to the Plat (herein so called) of the Properties recorded in the Map Records of Dallas County, Texas (hereinafter referred to as the "Plat") as it deems advisable, in its sole discretion. All Members are advised that a portion of the Common Properties may be located within the platted and dedicated public rights-of-way and in connection therewith the public shall have rights of use and enjoyment of Common Properties located within the public rights-of-way; and

## ARTICLE V
## COVENANTS FOR ASSESSMENTS

**5.01 Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant and agreement shall be deemed to constitute a portion of the consideration and purchase money for the acquisition of the Lot), to pay to the Association (or to an entity or collection agency designated by the Association): (1) annual maintenance assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided; (3) individual special assessments levied against individual Lot Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear



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and tear, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special capital, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with interest thereon and costs of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

**5.02 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Properties, and in particular for the improvement and maintenance of roadways, street lights, street signs, traffic control devices, walkways, parkways or other properties, services, improvements and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Properties including, but not limited to the payment of taxes on the Common Properties and insurance in connection with the Common Properties and the repair, replacement and additions thereto; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties; for carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter; and for carrying out the purposes of the Association as stated in its Articles of Incorporation.

**5.03 Improvement and Maintenance of the Common Properties Prior to Conveyance to the Association.** Initially, all improvement of the Common Properties shall be the responsibility of the Declarant and shall be undertaken by Declarant at its sole cost and expense with no right to reimbursement from the Association. After the initial improvements are substantially completed and until the date of the conveyance of the title to the Common Properties to the Association, the Declarant, on behalf of the Association, shall have the responsibility and duty (but with right of assessment against all Owners) of maintaining the Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties. In this regard, and until such time as the Common Properties are conveyed to the Association, all assessments, both annual and special, collected by the Association (less such amount required for the operation of the Association) shall be forthwith paid by the Association to Declarant, to the extent that such assessments are required by Declarant to maintain the Common Properties as set forth in this Paragraph. The Association may rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to maintain the Common Properties hereunder.

**5.04 Basis and Amount of Annual Maintenance Assessments.**

(a) Commencing with the year beginning January 1, 1993, and each year thereafter, the Board of Directors, at its annual meeting next preceding such



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January 1, 1993, and each respective January 1 thereafter, may set the amount of the maximum annual assessment for the following year for each Lot, provided that the maximum annual assessment may not be increased more than fifteen percent (15%) above the maximum annual assessment for the previous year unless otherwise approved by a majority of the votes of the Association's Members, regardless of class, as provided in Section 3.03 of Article III.

(b) When the assessment is computed for Lots, all or a portion of such assessment shall be payable to the Association by the Member according to the status of the Lot owned by such Member as follows:

(i) When the Lot is owned by a Class A Member the full assessment shall be payable.

(ii) When the Lot is owned by a Class B Member one-quarter (1/4) of the assessment shall be payable.

(c) Notwithstanding anything herein contained to the contrary, prior to January 1, 1993, the maximum assessment chargeable against any Lot for which a full assessment is payable, shall not exceed $10.00 per month.

(d) The Association's Board of Directors may fix the actual annual assessment at an amount equal to or less than the then-existing maximum annual assessment. The Board of Directors may provide that annual assessments shall be paid semi-annually or annually on a calendar year basis. Written notice of the annual assessment to be paid by each Member shall be sent to every Member, but only to one (1) joint owner.

**5.05 Special Assessments for Capital Improvements and Special Individual Assessments.**

(a) In addition to the annual assessments authorized by Section 5.04 hereof, the Association may levy in any assessment year a special capital assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Properties or Common Properties, including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the affirmative approval of a majority of the votes of the Members, regardless of class, who are voting in person or by proxy at a meeting duly called for that purpose, as provided in Section 3.03 of Article III.

(b) Upon an affirmative vote of a majority of the Members of the Board of Directors of the Association, the Association may levy special individual

assessments against individual Lot Owners for reimbursement for repairs occasioned by the willful or negligent acts of such individual Lot Owners and not ordinary wear and tear.

**5.06 Uniform Rate of Annual Special Capital Assessments.** Except as otherwise provided in Section 5.04(b), both annual and special capital assessments must be fixed at a uniform rate for all Lots payable as set forth in Section 5.04 and Section 5.05 above. Unless a majority of the Lot Owners and their respective first mortgagees have given prior written approval, the Board of Directors of the Association shall not change the pro rata interest or obligations of any Lot (or Owner thereof) for purposes of levying annual and special capital assessments and charges.

**5.07 Date of Commencement of Assessments; Due Dates:** The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors of the Association to be the date of commencement and, except as hereinafter provided, shall be payable annually, semi-annually, in advance, on the first day of each payment period thereafter, as the case may be and as the Board of Directors shall direct. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 5.04 hereof as the remaining number of months in that year bears to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the maintenance assessment for such month shall be prorated by the number of days remaining in the month. The due date or dates, if it is to be paid in installments, of any other assessment or special assessment under Sections 5.04 and 5.05 hereof, shall be fixed in the respective resolution authorizing such assessment. Annual, special capital and special individual assessments may be established, collected and enforced by the Declarant at any time prior to the incorporation of the Association.

**5.08 Duties of the Board of Directors with Respect to Assessments.**

(a) The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner.

(c) The Board of Directors shall upon demand at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such



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certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

**5.09 Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.**

(a) If any assessment or any part thereof is not paid on the date(s) when due (being the dates specified in Section 5.07 of this Article), then the unpaid amount of such assessment shall become delinquent and shall, together with such interest thereon, and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the non-paying Owner which shall bind such Lot, the Owner of such Lot and his heirs, executors, devisees, personal representatives and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The personal obligation of the then-existing Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. However, the lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by non-use of the Common Properties or abandonment of his Lot.

(b) The Association may give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within thirty (30) days after the date such assessment was due.

(c) If any assessment or part thereof is not paid when due, the unpaid amount of such assessment shall bear interest from the date of delinquency at a rate equal to the lesser of eighteen percent (18%) per annum or the maximum lawful rate, and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto, and there shall be added to the amount of such unpaid assessment any and all costs of collection incurred by the Association, including reasonable attorneys' fees.

**5.10 Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bona fide first lien mortgage or deed of trust now or hereafter placed upon the Lots subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale, whether public or private, of such property pursuant to the terms and conditions

of any such deed of trust. Such sale shall not relieve such Lots from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

**5.11 Exempt Property.**

The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein:

(a) All properties dedicated and accepted by the local public authority and devoted to public use.

(b) All Common Properties as defined in Article I hereof.

## ARTICLE VI
## GENERAL POWERS AND DUTIES
## OF BOARD OF DIRECTORS OF THE ASSOCIATION

**6.01 Powers and Duties.** The affairs of the Association shall be conducted by its Board of Directors. Prior to the incorporation of the Association, the Declarant shall select and appoint the Board of Directors, each of whom shall be a Class A or Class B Member, or an officer, employee, representative or agent of a Class A or Class B Member. From and after the effective date of the Association's incorporation, the Board of Directors shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Properties and the Owners, shall provide, and shall pay for out of the maintenance funds(s) provided for in Article V above, the following:

(a) Care and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from the reserve fund as specifically provided in Section 6.05 herein.

(b) Care and maintenance of the landscaping, masonry and/or wrought iron screening walls and entry features which may be constructed by Declarant on the Common Properties or on private property. Maintenance includes all repair or rebuilding required and cleaning as required to remove graffiti or obscenities.

(c) Maintenance, should the Board so elect, of exterior grounds, drives, parkways, private streets and access areas, including care of trees, shrubs

and grass, the exact scope of which shall be further specified by the Board from time to time. In particular, the Board shall be empowered to contract with persons or entities who shall be responsible for the maintenance of landscaping, trees, shrubs, grass and like improvements which are located on the Common Properties. Landscaping and other like improvements which are located within the Lots shall be maintained by the individual Lot Owner owning such Lot. Maintenance services contracted for by the Board in accordance with this paragraph shall be paid for out of Association funds.

(d) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(e) Legal and accounting services.

(f) Any other materials, supplies, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(g) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Properties.

(h) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on the individual Lots with respect to: (i) taxes on the Common Properties, and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned by Article V hereinabove.

(i) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(j) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Properties.

(k) If, as, and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.

(l) To make reasonable rules and regulations for the operation and use of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Properties, by a majority of the Members in the portions affected.

(m) Subsequent to incorporation, to make available to each Owner, within one hundred twenty (120) days after the end of each year, an unaudited annual report.

(n) Pursuant to Article VII herein, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(o) If, as and when the Board, in its sole discretion, deems necessary it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

**6.02 Board Powers.** From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

**6.03 Maintenance Contracts.** The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

**6.04 Liability Limitations.** Neither any Member nor the Board of Directors (or any of them) or the officer (if any) of the Association shall be personally liable for debts contracted for, or otherwise incurred by the Association, or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its Directors, officers, agents, 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. Declarant, the Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portion thereof.

The Common Properties may be subject to storm water overflow, natural bank erosion and other natural or man-made events or occurrences to extents which cannot be defined or

controlled. Under no circumstances shall Declarant ever be held liable for any damages or injuries of any kind or character or nature whatsoever resulting from: (1) the occurrence of any natural phenomena; (ii) the failure or defect of any structure or structures situated on or within the Common Properties; and (iii) any act, conduct, omission or behavior of any individual, group of individuals, entity or enterprise occurring on, within or related to the Common Properties.

**6.05 Reserve Funds.** The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The Reserve Fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the subdivision, and maintaining the subdivision and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors. Capital expenditures from this fund may include by way of example, but not be limited to, repair of major damage to the Common Properties not covered by insurance.

## ARTICLE VII
## INSURANCE; REPAIR AND RESTORATION

**7.01 Right to Purchase Insurance.** The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the subject property. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Public liability and property damage insurance on a broad form basis.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as shall be determined by the Association in accordance with its Bylaws.

(d) Officers and directors liability insurance.

**7.02 Insurance Proceeds.** Proceeds of insurance shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties.

**7.03 Insufficient Proceeds.** If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency. If the insurance proceeds are insufficient to repair or replace any loss or damage for which an Owner is bound hereunder, such Owner shall, as such Owner's undivided responsibility, pay any excess costs of repair or replacement.

**7.04 Mortgagee Protection.** There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause; provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of costs of repair or replacement, subject to the provisions of Section 7.02 hereof. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanics', materialmen's and similar liens which may result from said repairs or replacements, are satisfied.

**7.05 Destruction of Improvements on Individual Lots.** In the event of destruction (total or partial) to the improvements on any individual Lot due to fire or any other cause each Lot Owner covenants and agrees to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year of the date that the damage occurs.

## ARTICLE VIII
## USE OF COMMON PROPERTIES

The Common Properties may be occupied and used as follows:

**8.01 Restricted Actions by Owners.** No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Properties.

**8.02 Damage to the Common Properties.** Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, pets, or invitees.

**8.03 Rules of the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

## ARTICLE IX
## USE OF PROPERTIES AND LOTS - PROTECTIVE COVENANTS

The Properties and each Lot situated thereon shall be constructed, developed, occupied and used as follows:

**9.01 Residential Purposes.** Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No Owner or other occupant shall use or occupy such Owner's Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family detached residence for the Owner or such Owner's tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of any Lot for apartment use.

**9.02 Minimum Lot Area.** Each Lot shall contain at least the minimum number of square feet established by the City of DeSoto, Texas. No Lot shall be resubdivided; provided, however, that Declarant shall have and reserves the right, at any time, or from time to time, upon the joinder and consent of the City of DeSoto, Texas, and with the joinder and consent of the directly affected Lot Owners, to file a replat of the Lot or Lots owned by such Owners to effect a resubdivision or reconfiguration of the Lot or Lots then owned by such Owners, so long as any such replat results in each resubdivided Lot containing not less than the minimum lot size established by the City of DeSoto, Texas. Lot Owners shall not unreasonably withhold or delay their joinder in or consent to the replat or amendments to the Plat.

**9.03 Floor Space.** Unless approved by Architectural Control Committee, all floor areas referenced below are for air conditioned floor areas, exclusive of porches, garages, or breezeways attached to the main dwelling. Each dwelling constructed on any Lot in the subdivision shall contain a minimum of nineteen hundred (1,900) square feet.

**9.04 Combining Lots.** Any person owning two or more adjoining Lots may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon (the plans and specifications therefor being approved as set forth in this Declaration) and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of any governmental authority having jurisdiction over the Properties. In the event of any such consolidation, the consolidated Lots shall be deemed to be a single Lot for purposes of applying the provisions of



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this Declaration; provided, however, such Owner shall continue to pay assessments on such Lots as if such Lots had not been consolidated and shall be entitled to one vote for each Lot (determined prior to such consolidation) owned by such Owner. Any such consolidation shall give consideration to easements as shown and provided for on the Plat and any required abandonment or relocation of any such easements shall require the prior written approval of Declarant as well as the prior written approval of any utility company having the right to the use of such easements. Combining of portions of Lots into a single building site is prohibited.

**9.05 Setback Requirements and Building Location.** All front, side, and rear setbacks must be approved by the Architectural Control Committee and must meet the requirements of the City of DeSoto and the requirements of the Plat of the Properties. The location of the main residence on each Lot and the facing of the main elevation with respect to the street shall be subject to the approval of the Architectural Control Committee. No building or structure of any type shall be erected on any Lot nearer to the property lines indicated by the minimum building setback line set forth on the recorded plat of the Properties.

**9.06 Height.** No building or structure on any Lot shall contain more than two (2) stories above street level except with the express written permission of the Architectural Control Committee. However, no building or structure on any Lot shall exceed, in height, the maximum height allowed by the City of DeSoto, such height to be measured and determined in accordance with the method approved by the City of DeSoto.

**9.07 Access.** No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot except as expressly provided on the Plat, or otherwise approved by the Architectural Control Committee.

**9.08 Drainage.** Neither the Declarant nor its successors or assigns, shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After construction of a residence on a Lot, the Lot will be graded so that surface water will flow to streets, alleys, drainage easements, or Common Properties, and in conformity with the general drainage plans for the subdivision.

**9.09 Utilities.** Each residence situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line. No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building construction. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except portable gas grills), shall require the prior written approval of the Architectural Control Committee, and, if so approved, the Architectural Control Committee may require that such tank, bottle or cylinder be installed underground. Any control boxes, valves, connections, utility risers or refilling or refueling devices shall be completely landscaped with shrubbery so as to obscure their visibility from the streets within or adjoining the Properties or from any other Lot.

**9.10 Construction Requirements.**

(a) The exterior surface of all residential dwellings shall be constructed of glass, brick, stone, stucco, or other materials approved by the Architectural Control Committee. It is specifically required that the exterior wall area of each residence located within the Properties shall not have less than eighty percent (80%) brick, stone or stucco construction. All chimneys shall be one hundred percent (100%) brick, stone or stucco construction. The surface area of windows surrounded completely by brick may be included within the computation of the exterior brick, stone or stucco wall area of a residence. No previously used materials, other than antique brick, shall be permitted on the exterior of the residential structures located within the Properties, without prior approval of the Architectural Control Committee.

The use of various roofing materials within the subdivision shall be permitted, however, no roofing material shall be used without first obtaining the Architectural Control Committee's approval of same. The Architectural Control Committee will only approve roofing materials which are of the highest grade and quality and which are consistent with the external design, color and appearance of other improvements within the subdivision. The roof pitch of any structure shall be 8" x 12" minimum. Any deviation of roof pitch must be approved by the Architectural Control Committee.

(b) Construction of a new single family dwelling on any Lot shall include the placement of a four (4) foot wide concrete sidewalk across the entire frontage of such Lot, which sidewalk will connect to the sidewalks constructed or to be constructed on adjoining Lots. Such sidewalks shall be constructed in conformity with the then existing ordinances, standards and codes promulgated by the City of DeSoto.

(c) No above ground-level swimming pools shall be installed on any Lot.

(d) All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot and all interior construction (including, but not limited to, all plumbing fixtures installed and operational, all cabinet work completed, all interior walls, ceilings, and doors shall be completed and covered by paint, wall-paper, paneling, or the like, and all floors covered by wood, carpet, tile or other similar floor covering) shall be completed not later than one (1) year following the commencement of construction. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.



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(e) Basketball backboards may be installed above the garage doors and freestanding goals may be installed twenty (20) feet behind the front building line of such Lot. Any other locations will require the express written approval of the Architectural Control Committee.

**9.11 Garages and Servants Quarters.** Each residential dwelling erected on any Lot shall provide fully enclosed garage space for a minimum of two (2) conventional automobiles. Detached garages, servants quarters, and storage rooms must be approved in writing by the Architectural Control Committee. All detached structures shall blend with the main residence in its roof pitch and use of exterior materials. No carport shall be built, placed, constructed or reconstructed on any Lot. As used herein, the term "carport" shall not be deemed to include a porte cochere. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles, unless a new garage is constructed to meet the requirements of this Section. No garage shall face a residential street. Porte cocheres must be approved in writing by the Architectural Control Committee.

**9.12 Landscaping.** Weather permitting, the front and side yards not enclosed by solid fencing of each Lot shall be fully landscaped within one hundred twenty (120) days from the date on which the residence thereon is occupied. Each Lot Owner shall be responsible for maintaining his own landscaping in a healthy living condition.

**9.13 Fences.** No fence, wall, gate or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Control Committee and the design of and materials used in the construction of fences shall be subject to the prior approval of the Architectural Control Committee. The Architectural Control Committee may require that a fence, wall, gate or hedge be of a material similar to and compatible with the fence, wall, gate or hedge of other Owners. The Architectural Control Committee will strive to protect and preserve lake and other natural views of the Owners. No fence, wall or hedge shall exceed eight (8) feet in height. Wood stockade fences are permitted. Unless otherwise approved by Architectural Control Committee no chain link fences or other wire type fences shall be erected on the perimeter of any Lot except for temporary chain link fencing installed along the perimeter of the subdivision for interim security. All service and sanitation facilities, clothes lines, wood piles, tool sheds and air conditioning equipment must be enclosed within fences, walls and/or landscaping so as not to be visible from the residential streets, adjoining Lots or the Common Properties. Upon submission of a written request for same, the Architectural Control Committee may, from time to time, at its sole discretion, permit Owners to construct fences or walls which are in variance with the provisions of this paragraph where in the opinion of the Architectural Control Committee, the fence or wall is an integral part of the home. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant of any such variance to any Owner. Each request for a variance submitted under this paragraph shall be reviewed separately and apart from other such requests and the grant of a variance to an Owner shall not constitute a waiver of the Architectural Control

Committee's right to strictly enforce the restrictions provided hereunder against any other Owners. Fencing shall be constructed in accordance with the following restrictions based on the location of such fencing.

**9.14 Trash Receptacles and Collection.** Each Lot Owner shall make or cause to be made appropriate arrangements with the City of DeSoto, Texas, for collection and removal of garbage and trash on a regular basis. If the Lot Owner fails to make such provisions, the Association may do so and assess the costs thereof to the Lot Owner. Each and every Lot Owner shall observe and comply with any and all regulations or requirements promulgated by the City of DeSoto, Texas, and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in tightly sealed bags or other approved containers which shall be maintained in a clean and sanitary condition. A Lot Owner may place trash on the street curb abutting his Lot only on those days designated by the City of DeSoto, Texas, as trash collection days. On Lots served by an garbage containers shall be constructed of a material that is harmonious with the exterior of the home. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon through completion of construction. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

**9.15 Window Coolers.** No window or wall type air-conditioners or water coolers shall be permitted to be used, erected, placed or maintained on or in any residential building on any part of the Properties.

**9.16 Antennas Restrictions.** No radio or television aerial wires or antennas shall be maintained on the outside of any building nor shall any free standing antennas of any style be permitted. All radio or television aerial wires or antennas must be built within the main structure and must not be visible from outside of such structure. The location of all satellite dishes shall be subject to the prior written approval of the Architectural Control Committee.

**9.17 Temporary Structures and Vehicles.** No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, except for a sale, pre-sale or construction trailer; provided, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operations on the

Property, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion of his last residence on the Properties. Any truck, bus, boat, boat trailer, trailer, mobile home, campmobile, camper or any vehicle other than conventional automobile shall, if brought within the Properties, be stored, placed or parked within the garage of the appropriate Lot Owner or concealed from view by other Lot Owners, unless the Architectural Control Committee, in its sole discretion, directs otherwise.

**9.18 Parking.** Adequate hard surface off-street parking shall be provided on each Lot for such Owner's daily needs and uses. On-street parking is restricted to approved deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted by the Board of Directors. Parking in driveways is permitted.

**9.19 Signs.** No signs or flags shall be displayed to the public view on any Lot without the prior approval of the Architectural Control Committee, with the following exceptions: (i) Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion and sale of the Lots; (ii) the patriotic display of flags not exceeding 4′ x 6′ in size. Notwithstanding anything herein contained to the contrary, any and all signs, if allowed, shall comply with all sign standards of the City of DeSoto, Texas, as such standards may be applicable to the Properties. No signs or flags for advertising purposes shall be displayed to the public view by homeowners or builders, excepting only signs of customary dimensions (3′ x 4′ maximum) advertising said property, or portions thereof, for sale.

**9.20 Removal of Dirt.** The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

**9.21 Drilling and Mining Operations.** No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil, natural gas or water shall be erected, maintained or permitted upon any Lot. Water wells shall be subject to the prior written approval of the Architectural Control Committee.

**9.22 Offensive Activities.** No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Lot Owners. No animals, livestock or poultry of any kind shall be raised, bred or kept on any residential Lot, except that dogs, cats or other household pets [not to exceed three (3) adult animals] may be kept, provided that they are not kept, bred or maintained for commercial purposes.

**9.23 Duty of Maintenance.**

(a) Owners and occupants (including lessees) of any Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the Lot so owned or occupied, including buildings, improvements, grounds or drainage easements or other rights-of-way incident thereto, and vacant land, in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

(i) Prompt removal of all litter, trash, refuse and waste;

(ii) Lawn mowing on a regular basis;

(iii) Tree and shrub pruning;

(iv) Watering landscaped areas;

(v) Keeping exterior lighting and maintenance facilities in working order;

(vi) Keeping lawn and garden areas alive, free of weeds, and attractive;

(vii) Keeping parking areas, driveways, and roads in good repair;

(viii) Complying with all government health and police requirements;

(ix) Repair of exterior damages to improvements;

(x) Cleaning of landscaped areas lying between street curbs and Lot lines, unless such streets or landscaped areas are expressly designated to be Common Properties maintained by applicable governmental authorities or the Association; and

(xi) Repainting of improvements.

(b) If, in the opinion of the Association, any such Owner or occupant has failed in any of the foregoing duties or responsibilities, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the repairs and maintenance or make arrangements with the Association for making the repairs and maintenance required. Should any such person fail to fulfill this duty and responsibility within

such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such repair and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and occupants (including lessees) of any part of the Properties on which such work is performed shall jointly and severally be liable for the cost of such work [such costs constituting a special individual assessment as specified in Section 5.05(b) hereof] and shall promptly reimburse the Association for such cost. If such Owner or occupant shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, then said indebtedness shall be a debt of the Owner and occupant of such Lots, jointly and severally, and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the lien for assessments and special assessments set forth in this Declaration, and the Association shall have the identical powers and rights in all respects, including but not limited to the right of foreclosure.

(c) Notwithstanding the provisions of Section 9.26(b) above, if, at any time, an Owner of any Lot shall fail to control weeds, grass and/or other unsightly growth, the Association shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum equal to the cost to the Association for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. If, at any time, weeds or other unsightly growth on the Lot exceed six inches (6") in height, the Association shall have the right and authority to mow and clean the Lot, as aforesaid. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment occurred. Each and every Owner of any Lot, by the acceptance of a deed or other conveyance of such Lot shall thereby covenant and agree to pay such assessments. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

**9.24 Maintenance of Common Properties.** All landscaping and improvements placed or erected on the Properties by Declarant shall be owned and maintained by the Association.

## ARTICLE X
## ARCHITECTURAL CONTROL COMMITTEE

**10.01 Architectural Control Committee.** The Architectural Control Committee, hereinafter called "the Committee", shall be composed of three (3) individuals selected and appointed by the Declarant. Jeff Blackard, Donald Anderson and Troy Priddy are the initial members of the Committee selected by Declarant. As long as Declarant is a Class B Member, Declarant shall have the authority to remove and/or replace any member of the Committee. The Committee shall function as the representative of the Owners of the Lots for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a high quality residential development.

A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor. Each member of the Committee, or its designated representative, shall neither be entitled to any compensation for services performed hereunder nor be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant.

**10.02 Architectural Approval.** No building, structure or improvement of any nature shall be erected, placed or altered on any Lot until the plot plan showing the location of such building, structure, paving or improvement, construction plans and specifications thereof and landscaping and grading plans therefor have been submitted to and approved in writing by the Committee as to: (i) location with respect to Lot lines and finished grades with respect to existing topography, (ii) conformity and harmony of external design, color, and texture with existing structures and existing landscaping, (iii) quality of materials; adequacy of site dimensions; proper facing of main elevation with respect to nearby streets; and (iv) the other standards set forth within this Declaration. The Committee is authorized to request the submission of samples of proposed construction materials or colors of proposed exterior surfaces. A reasonable fee may be charged by the Committee to review any such plans and specifications.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Lot Owner. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved", accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications which materially affects items (i) through (iv) of the preceding paragraph must again be submitted to the Committee, for its inspection and approval. The Committee's approval or disapproval as required herein shall be in writing. If

the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, then Committee approval shall be presumed.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction, construction of other improvements and location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Lot Owner(s) or the general value of the Properties. As an example, and not by way of limitation, the Committee may impose limits upon the location of window areas of one residential dwelling which would overlook the enclosed patio area of an adjacent residential dwelling. Also, the Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee may, from time to time, publish and promulgate architectural standards bulletins; such bulletins shall supplement these Covenants and Restrictions and are incorporated herein by reference. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these Covenants and Restrictions.

**10.03 Variances.** Upon submission of a written request for same, the Committee may, from time to time, in its sole discretion, permit Lot Owners to construct, erect, or install improvements which are in variance from the architectural standards, Covenants and Restrictions, or previously published architectural bulletins which are provided in this Declaration or which may be promulgated in the future. In any case, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community. No member of the Committee shall be liable to any Lot Owner for any claims, causes of action, or damages arising out of the grant of any variance to a Lot Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Lot Owner shall not constitute a waiver of the Committee's right to strictly enforce the Covenants and Restrictions and architectural standards provided hereunder against any other Lot Owner.

**10.04 Nonconforming and Unapproved Improvements.** The Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration. In addition, the Association may, but has no obligation to do so, cause such restoration, demolition and removal and levy the amount of the cost thereof as a special individual assessment against the Lot upon which such improvements were commenced or constructed.

**10.05 No Liability.** Neither Declarant, the Association, the Committee, nor the Board nor the officers, directors, members, employees and agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any

Owner of property affected by these Covenants and Restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Committee, the Board, or the officers, directors, members, employees or agents of any of them, to recover any such damages and hereby releases, remises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Plans and specifications are not approved for engineering or structural design or adequacy of materials, and by approving such plans and specifications neither the Committee, the members thereof, the Declarant nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications.

## ARTICLE XI
## EASEMENTS

**11.01 Ingress and Egress by the Association.** Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot for the maintenance and repair of each Lot and the Common Properties in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as little inconvenience to the Owner as practical, and any damage caused by the Association's entry, other than damages caused by the Owner, shall be repaired by the Association at the expense of the Association.

**11.02 General.** The rights and duties of the Owners of Lots within the Property with respect to sanitary sewer, water, electricity, telephone and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer and/or water service connections or natural gas, electricity, or telephone and cable television lines or drainage facilities are installed within the Properties, which connection lines or facilities or any portion thereof, lie in or upon Lots owned by any party other than the Owner of a Lot served by said connections, lines or facilities, such Owners of Lots served shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots within the Property within or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary.

(b) Wherever sanitary sewer and/or water service connections, natural gas, electricity, telephone or cable television lines or drainage facilities are installed within the Property, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service such Owner's Lot.

**11.03 Reservation of Easements.** Easements over the Lots and Common Properties for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities are hereby reserved by Declarant, together with the right to grant and transfer same.

**11.04 Surface Areas of Utility Easements.** Easements for installation and maintenance of utilities are reserved as shown and provided for on the Plat. Underground electric, natural gas and telephone service shall be available to all Lots in the subdivision. Easements for the underground service may be crossed by driveways, walkways, patios, brick walls and fences, provided the Declarant or builder makes prior arrangements with the utility companies furnishing electric, natural gas and telephone service and provides and installs any necessary conduit of approved type and size under such driveways, walkways, patios, brick walls or fences prior to construction thereof. Such easements for the underground service shall be kept clear of all other improvements, and neither the grantee 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, flowers or other improvements (other than for damages caused in crossing driveways, walkways, patios, brick walls or fences, providing conduit has been installed as outlined above) of the Owner located on the Lot covered by said easements.

**11.05 Emergency and Service Vehicles.** An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Properties, including but not limited to private streets, in the performance of their duties; and further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Common Properties to render any service.

**11.06 Universal Easement.** Each Lot and its Owner within the Properties is hereby declared to have an easement not to exceed one (1) foot in width, and the same is hereby granted to Declarant, over all adjoining Lots and Common Properties for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to willful misconduct of said Owner or Owners. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot.

## ARTICLE XII
## GENERAL PROVISIONS

**12.01 Duration.** The Covenants and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date that this Declaration is recorded in the office of the County Clerk of Dallas County, Texas, after which time said Covenants and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Members entitled to cast seventy percent (70%) of the votes of the Association in the aggregate, regardless of class, and has been recorded in the Deed Records, Dallas County, Texas, agreeing to abolish these Covenants and Restrictions in whole or a substantial portion thereof; provided, however, that no such agreements to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

**12.02 Amendments.** Notwithstanding Section 12.01 of this Article these Covenants and Restrictions may be amended and/or changed in part as follows:

(a) during the ten (10) year period immediately following the date of recordation of these Covenants and Restrictions, the Declarant may amend or change these Covenants and Restrictions with the consent of at least fifty-one percent (51%) of a quorum of the outstanding votes of all Members of the Association, regardless of class;

(b) in all other situations, these Covenants and Restrictions may be amended or changed upon the express written consent of at least seventy percent (70%) of a quorum of the outstanding votes of each membership class of the Association.

Any and all amendments, if any, shall be recorded in the office of the County Clerk of Dallas County, Texas. Notwithstanding the prior provisions of this Section 12.02, the Declarant may execute and record amendments to this Declaration without such consent or approval if the amendment is for the purpose of correcting technical or typographical errors or for clarification only.

**12.03 Enforcement.** Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**12.04 Severability.** Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

**12.05 Headings.** The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

**12.06 Notices to Member/Owner.** Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**12.07 Notices to Mortgagees.** If a holder of a mortgage on a Lot shall notify the Association of its address and the identity of the Lot and Owner covered by and granting such mortgage, then such holder(s) shall be entitled to receive, written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration.

**12.08 Disputes.** Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board of Directors, whose reasonable determination shall be final and binding upon all Owners.

**12.09 Termination of and Responsibility of Declarant.** If Declarant shall convey all of its right, title and interest in and to the Property and assign all its rights, benefits and obligations as Declarant hereunder to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

**IN WITNESS WHEREOF,** FROST OAKS JOINT VENTURE, a Texas joint venture, being the Declarant herein, has caused this instrument to be executed as of the 14 day of September, 1992.

**FROST OAKS JOINT VENTURE,**
a Texas joint venture

By: BLACKARD INDUSTRIES, INC.,
Venturer

By: _____
Jeffory D. Blackard, President

By: S.M. CAPITAL CORP., Venturer

By: _____
M. E. Moore, Jr., President

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared JEFFORY D. BLACKARD, President of BLACKARD INDUSTRIES, INC., acting as a joint venturer of FROST OAKS JOINT VENTURE, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of such joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of September, 1992.

Andrea Pastore
Notary Public, State of Texas

My Commission Expires:
6-22-93

Andrea Pastore
(Printed or Typed Name of Notary)

ANDREA PASTORE
COMMISSION EXPIRES
JUNE 22, 1993



I:\CLIENT-B\3057180\750\DECLAR.FRO

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STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared M. E. MOORE, JR., President of S.M. CAPITAL CORP., acting as a venturer of FROST OAKS JOINT VENTURE, a Texas joint venture, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of such joint venture.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 16th day of September, 1992.

Doris Diffee
Notary Public, State of Texas

Doris Diffee
(Printed or Typed Name of Notary)

My Commission Expires:
9-4-96

DORIS DIFFEE
MY COMMISSION EXPIRES
September 4, 1996



I:\CLIENT-B\3057180\750\DECLAR.FRO

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FILED

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EARL BULLOCK
COUNTY CLERK
DALLAS COUNTY

A 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.

STATE OF TEXAS COUNTY OF DALLAS

I hereby certify this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the named records of Dallas County, Texas as stamped hereon by me.

SEP 25 1992

Earl Bullock

COUNTY CLERK, Dallas County, Texas