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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

STATE OF TEXAS }
 }
COUNTY OF KENDALL } **KNOW ALL MEN BY THESE PRESENTS:**

WOODRIDGE ESTATES

WHEREAS, RICKY AND DEBRA STEWART, hereinafter called the Declarant, is the holder of fee simple title to certain real property located in Kendall County, Texas, known as WOODRIDGE ESTATES, according to the plat recorded in Volume 4, Pages 298-301, of the Plat Records of Kendall County, Texas:

WHEREAS, the Declarant will convey the above described properties (with the exception of Lot 16 and Lot 29, which shall not be subject to this Declaration of Covenants, Conditions and Restrictions), subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth and to create thereon a resident community with designated "Lots" and "Common Area" (as those terms are defined herein) for the benefit of the present and future owners of said Lots;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the valucs and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the Common Area and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, WOODRIDGE ESTATES PROPERTY OWNERS ASSOCIATION, INC., has been or will bc incorporated under the laws of the State of Texas as a non-profit corporation for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, it is hereby declared (i) that all of the property described above (with the exception of Lot 16 and Lot 29, which shall not be subject to this Declaration of Covenants, Conditions and Restrictions), shall be held, sold and conveyed subject to the following covenants, easements, conditions and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the said property and which shall be binding on all parties having any right, title or interest in or to the above described property or any part

thereof, and their heirs, successors and assigns, and which easements, covenants, restrictions and conditions shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed. Developer also declares that WOODRIDGE ESTATES shall be subject to the jurisdiction of the "Association" (as hereinafter defined) except as otherwise provided herein.

ARTICLE I
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01. **"Architectural Committee"** shall mean the committee created pursuant to these restrictions to review and approve plans for the construction of improvements upon the Property.

1.02. **"Architectural Committee Rules"** shall mean the rules and regulations adopted by the Architectural Committee, as the same are amended from time to time.

1.03. **"Association"** shall mean and refer to the WOODRIDGE ESTATES PROPERTY OWNERS ASSOCIATION, INC., and its successors and assigns.

1.04. **"Board of Directors"** shall mean and refer to the Board of Directors of the Association.

1.05. **"Builders"** shall mean and refer to persons or entities that purchase Lots and build speculative or custom homes thereon for third party purchasers.

1.06. **"Common Area"** shall mean all real property (including the improvements thereto) within the Subdivision owned by the Developer and/or the Association for the common use and enjoyment of the Owners.

1.07. "Contractor" shall mean and refer to the person or entity with whom an Owner contracts to construct a residential dwelling on such Owner's Lot.

1.08. "Declarant" shall mean RICKY AND DEBRA STEWART, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of RICKY AND DEBRA STEWART, as Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.09. "Declarations" shall mean this instrument as it may be amended from time to time.

1.10. "Developer" shall mean and refer to Ricky and Debra Stewart and their successors and assigns.

1.11. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, out-buildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioners, water softener fixtures or equipment, and poles, pumps wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.12. "Main Dwelling Unit" shall mean a single family dwelling unit.

1.13. "Member" shall mean and refer to every person or entity who holds a membership in the Association.

1.14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Subdivision, including (i) contract sellers (a seller under a Contract-for-Deed), but excluding those having such interest merely a security for the performance of an obligation, (ii) Developer (except as otherwise provided herein), and (iii) Builders.

1.15. "Property" shall mean all of the real property described above with the exception of Lot 16 and Lot 29, which shall not be subject to this Declaration of Covenants, Conditions and Restrictions.

1.16. "The Restrictions" shall mean this Declaration, as the same may be amended from time to time, together with the Architectural Committee Rules

1.17. "Subdivision" shall mean WOODRIDGE ESTATES created or to be created from the Property according to the Plat(s) thereof recorded or to be recorded in the Map or Plat Records of Kendall County, Texas, with the exception of Lot 16 and Lot 29, which shall not be subject to this Declaration of Covenants, Conditions and Restrictions.

1.18. "Structure" shall mean all buildings, installations, fixtures, fences, and improvements of every kind or character constructed, erected, or placed on the Property.

1.19. "Lot" shall mean and refer to any plot of land identified as a Lot or home site on the Plat of WOODRIDGE ESTATES with the exception of Lot 16 and Lot 29, which shall not be subject to this Declaration of Covenants, Conditions and Restrictions. For purposes of this instrument, "Lot" shall not be deemed to include any portion of the "Common Areas" or "Unrestricted Reserves", (deemed herein as any Common Areas and Unrestricted Reserves shown on the Plat) in WOODRIDGE ESTATES, regardless of the use made of such area.

ARTICLE II. GENERAL RESTRICTIONS

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01. Use of Lots. Each of the Lots in the Subdivision shall be used only for the construction of one main dwelling unit thereof, including other appurtenant structures permitted under the terms hereof.

2.02. Dwelling Size. Each main dwelling unit constructed on each Lot shall contain the following minimum square feet of living area, exclusive of porches, garages, balconies, terraces, breezeways, accessory buildings and the like: (a) 2,000 square feet for one-story or split-level units; or (b) 2,200 square feet for two-story or story and one-half units. The first story on all two-story units & all story and one-half units must have a minimum of 1,500 square feet of living area.

2.03. Subdividing. No Lot shall be re-subdivided into smaller Lots by any Owner; provided, however, that this restriction shall not prevent correction deed or other documents to resolve boundary disputes; provided further, however, Developer reserves the right to re-subdivide and replat Lot 16 into no more than 25 additional Lots, along with streets and roads for the use of said re-subdivided lots. Upon the re-subdivision and replat of Lot 16, such additional Lots may at Developer's discretion, become a part of Woodridge Estates Subdivision, shall be entitled to use all existing streets and roads in the subdivision, and shall be subject to this Declaration of Covenants, Conditions and Restrictions.

2.04. Mobile Homes or Modular Homes. No mobile homes, trailer homes, or modular homes of any type shall be permitted on any Lot or on any part of the property.

2.05. Workmanlike Manner. Each structure constructed, placed or erected on a Lot shall be constructed in a good and workmanlike manner with the use of new materials and in such a way as to present a neat and attractive appearance in the area thereof, and shall be in compliance with all requirements of these restrictions and/or Kendall County.

2.06. Offensive Activities. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done thereon which may be, or upon the repeated occurrence thereof become, an annoyance or nuisance to the other Lot owners.

2.07. Illegal Activities. None of the Lots shall be used for illegal purposes or activities.

2.08. Time for Completion of Construction. The main dwelling unit, together with the driveways, sidewalks and other exterior appurtenances thereto, must be completed within twelve (12) months after the commencement of work thereon or the placing of materials thereof on such Property, whichever occurs the earliest. If any other building except the main dwelling unit is built, then, Owner shall have eighteen (18) months after the commencement of work on said unit to complete the main dwelling unit, together with the driveways, sidewalks and other exterior appurtenances thereto. The main dwelling unit must be completed prior to the beginning of construction of any guest house on a Lot.

2.09. Set Backs. The main dwelling unit, garage, and accessory buildings shall be set back at least sixty feet (60') from the front property line of

each Lot and at least sixty feet (60') from any street in the subdivision and shall be set back at least thirty-five feet (35') from the side and rear Lot lines of each Lot in the Subdivision. (See 2.14 below for other set back requirements on storage buildings and other structures)

For the purpose of this section, eaves, steps and open porches shall not be considered as part of the main dwelling unit. However, this shall not be construed to permit any encroachment on another Lot or street.

The Architectural Committee is hereby given authority to waive the requirements by prior written approval of such variance of this section where in the sole opinion of said Committee the proposed location of the Structure will add to the appearance and value of the Property and will not detract from the appearance and value of the remaining Property.

2.10. Building Materials. Any building material including brick, stucco, natural stone, or lap siding may be used in construction of main dwelling. All lap siding must be approved in advance by the Architectural Review Board. The exterior walls of any Main Dwelling Unit and the garage, whether attached or detached, and any approved guest house, shall consist of not less than a total of sixty percent (60%) masonry construction, provided that the portion of the Main Dwelling Unit and garage facing the front property line must consist of one-hundred percent (100%) masonry. Masonry is defined as stone or stucco, or other material approved by the Architectural Control Committee.

2.11. Foundations. All footing, piers and foundations of the main dwelling unit on any Lot in said Subdivision shall be of concrete construction.

2.12. Roofing Surfaces\Materials. The main roof surfaces of all structures must be a minimum of six (6) to twelve (12) pitch. All roofing materials must be approved in writing in advance by the Architectural Committee; provided, however, that the following materials are specifically permitted; metal standing seam, concrete tile, dimensional composition shingles. No gravel roof or built-up roof shall be allowed on main roof surfaces.

2.13. Garage and Accessory Buildings. All dwellings must have at least one (1) fully enclosed two-car garage as a storage area for vehicles. The outer walls of the garage or other permitted accessory buildings, whether detached or attached to the main residence and within 200 feet of the front property line or within 200 feet of any street in the subdivision, shall be of the same materials, finishes

and colors as the outer walls of the main dwelling.

2.14. Metal Storage Buildings and Other Structures. No metal storage building, barn, or any other structure shall be permitted upon any Lot unless expressly approved in advance and in writing by the Architectural Committee. All construction of such structures must be of new materials and in general harmony with other structures in the subdivision. In any event, any such structure shall be located behind the main dwelling unit and not within 200 feet of the front property line or within 200 feet of any street in the subdivision and not within 35 feet from side and rear Lot lines of each Lot in the subdivision. If the Architectural Committee permits a building to be built in front of the main dwelling then the front of that building, facing the street, shall be of like material as that of the main structure.

2.15. Fencing. No fence, wall or hedge shall be erected, placed or altered on any Lot within 200 feet of any street without prior written approval of the Architectural Committee and, said fencing if installed must comply with the specifications and details as set forth in the Fencing Code Requirements approved by the Architectural Committee. Notwithstanding the preceding sentence, no chained link fencing shall be allowed on the Property except an enclosure approved by the Architectural Committee for a domestic pet, which may not be visible from any road in the Subdivision.

2.16. Driveways and Roads. All driveways in front of the sixty foot (60') setback line shall be surfaced with concrete, masonry or asphalt coating. No driveway or road shall be built upon any Lot that serves or is used as a thoroughfare or path from one Lot to another or from one Lot to a road in the subdivision without the express written prior approval of the Architectural Committee. No driveway or road shall be permitted to be built upon any Lot that serves or is used as a thoroughfare or path from any road or land outside the subdivision that would connect to any Lot or road within the platted subdivision without the express prior written approval of the Architectural Committee. Provided, however, Developer shall be permitted without the approval of the Architectural Committee or any Owner, to use any Lot owned or acquired by Developer as access to property outside of the Subdivision, and to build or construct on such Lot a road or thoroughfare to provide access to and from such adjoining property to WOODRIDGE ESTATES Subdivision. Developer shall have the right to make changes in and additions to existing roads for the purpose of efficiently and economically developing the Property and other property made subject to this Declaration. Further, Developer shall have the right, without the necessity of the joinder or consent of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at

anytime or from time to time rights-of-way and easements for access, ingress and egress to and from the Property to any adjoining land.

2.17. Rubbish and Debris. No Lot shall be used or maintained as a dumping ground. Rubbish, trash, garbage and other waste shall be kept in sanitary containers, which at all times must be concealed from public view. No trash, ashes, or other refuse may be thrown or dumped on any vacant Lot, Common Area, private street, easement or drainage area in the subdivision. No Lot may be used for storage of any equipment or materials prior to construction of the residence on said Lot, save and except materials and equipment used in construction of the residence during construction.

2.18. Lawns and Grounds. All residences and vacant Lots must be kept in an attractive fashion. Lawns must be properly maintained, and no objectionable or unsightly usage will be permitted which is visible to the public view. No gravel, rock or concrete yards will be permitted. Upon failure of the Owner to do so, the Declarant may, at its option, have the Lot cleaned and mowed and the Owner shall be assessed by Declarant for all reasonable costs of such work. Owners hereby release and hold harmless Declarant for any liability or damages resulting from Declarant being required to clean and mow such Lot.

2.19. Temporary Structures. No structure of a temporary character, including but not limited to, tent, shack, garage, barn, or other outbuilding, or trailer, mobile home, house trailer, recreational vehicle, truck camper or similar facility, shall be used on any Lot at any time as a residence or storage facility, either temporarily or permanently.

2.20. Unsightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot, street or Common Areas so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, tents, recreational vehicles, campers, stripped down or inoperable vehicles are deemed to be unsightly. However, it is understood that one vacation-type recreational vehicle and/or trailer and/or boat may be parked at or near a main dwelling unit on a Lot provided it is not used as living quarters and rests behind the main dwelling unit.

2.21. Construction and Farm Equipment. No construction, farm or other equipment or machinery, including, but not limited to, tractors, backhoes, front-end loaders, and grading equipment, shall be kept, parked, stored, repaired or maintained on any Lot, street or Common Area, unless concealed from view; pro-

vided, however, it is understood that during construction of a structure on a Lot pursuant to the terms of this Declaration, such equipment or machinery may be parked at or near such Lot temporarily.

2.22. **Signs.** No signs of any kind shall be displayed to the public view on any Lot except one professional sign of not more than two (2) square feet indicating the name of the Lot Owner, or one sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by the Declarant or the builder to advertise the Property during the construction and a period not exceeding nine (9) square feet of surface area. Sales flags shall not be placed on any Lot.

2.23. **Hunting.** No hunting shall be permitted on any Lot or street or common area.

2.24. **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth.

2.25. **Animals.** No swine shall be permitted on any Lot. No more than four (4) domestic pets (dogs &/or cats) may be kept on any Subdivision Lot. No more than two (2) head of livestock per three (3) acres shall be permitted on any Lot. No chickens, hens or roosters shall be permitted on any lot. All pets and animals shall be contained within a fence within the boundaries of the property of the Owner, and any such pet or animal declared a nuisance by four (4) or more of the Property Owners shall be removed from the Subdivision in a humane and expeditious manner.

2.26. **Satellite Reception Dish and/or Tower.** The proposed location of any satellite reception dish shall be submitted to the Architectural Committee for prior written approval of said location before installation. Any such dish must be shielded from the view of other residences and from subdivision roads. No transmission or reception tower shall exceed thirty (30) feet in height. Under no circumstances will more than one (1) dish and one (1) tower be allowed on each Lot.

2.27. **Prohibited Activities.** No commercial business venture or activity shall be conducted on any Lot. An office incidental to an Owner's business may be maintained within an Owner's residence so long as activities conducted in

connection with the home office do not attract traffic, or otherwise become an annoyance or nuisance to the subdivision, and that the office is not advertised in any way or the general public invited. Any violation of this restriction shall constitute a violation of these restrictive covenants and will support an action against the violator hereof.

2.28. Garage and Yard Sales. Each Lot Owner shall be limited to no more than two sales (e.g. garage sales, yard sales, moving sales, etc.) per calendar year.

2.29. Drainage. There shall be no interference with the established drainage patterns over any of the Property, except by Declarant, unless adequate provision is made for proper drainage and there has been prior written approval by the Architectural Committee.

2.30. Compliance with Restrictions. Each Owner shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to recover sums due for damages or injunctive relief or both.

2.31. No Warranty of Enforceability. While Declarant has no reason to believe that any of the restrictive covenants or other terms and provision contained in this Article or elsewhere in this declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

ARTICLE III ARCHITECTURAL CONTROL

3.01. Prior Written Approval by Architectural Committee. No structure shall be erected, placed or altered in whole or in part on any Lot until such time as the construction plans and specifications for such Structure, with a plot plan showing its specific location, have been approved in writing by the Architectural Committee as to the quality of materials, conformity and harmony with the external character and design with existing Structures in the Subdivision, and the

location of the said structure with respect to Lot lines, trees, topography and finished ground elevation.

3.02. Architectural Committee. The Architectural Committee shall be composed of three (3) or more persons. The said Committee shall be chosen by Declarant (or Declarant may act as such Committee) until such time as seventy-five per cent (75%) of all Lots have been sold by Declarant following the date of this Declaration. Thereafter, the Committee shall be chosen by a majority vote of all Lot owners, where each Lot shall have one vote. A majority shall consist of fifty-one percent (51%) or greater of all votes. For the purposes of this vote, sixty per cent (60%) of all Lots must participate in any such vote in order to constitute a quorum. In the event of the death or resignation of any member of said Committee, the remaining member or members shall have full authority to approve or disapprove such plans, specifications and plot plans.

Members

3.03. Approval by the Architectural Committee. The Architectural Committee shall have the express authority to perform fact finding functions hereunder and shall have the power to construe and interpret any covenants herein that may be construed or interpreted as vague, indefinite, uncertain, and capable of more than one interpretation.

3.04. Decisions of the Architectural Committee. All decisions of the Architectural Committee shall be final and binding, and there shall be no revision of any action of such Committee except by procedure of injunctive relief when such action is patently arbitrary and capricious. Members of said Committee shall not be liable to any person subject to or possessing or claiming the benefits of these restrictive covenants for any damage or injury to property or for damage or loss arising out of their acts hereunder; it being understood and agreed that any remedy shall be restricted to injunctive relief and no other.

3.05. Compensation of Architectural Committee. Members of the Architectural Committee shall not be entitled to any compensation for services pursuant to this covenant, but shall be entitled to reimbursement of reasonable expenses incurred in connection with its services performed.

3.06. Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or proper for the performance of its duties, including but not limited to, a building code, a fire code, a housing code, a fencing code and other similar codes as it may deem necessary and desirable to supplement Kendall

County Codes. Nothing in these Deed Restrictions shall obviate the requirement that each member comply with all County codes, ordinances and regulations. Furthermore, nothing in these Deed Restrictions shall obviate the requirement that each member comply with all State statutes and regulations.

3.07. Waiver by Architectural Committee. The Architectural Committee may waive any requirement described in Article II of this Declaration.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

4.01. Membership. Every person or entity who is a record owner of a fee or undivided interest in any Lot which is subject to the jurisdiction of and to assessments by the Association, shall be a member of the Association; provided, however, that any person or entity holding an interest in any such Lot or Lots merely as security for the performance of an obligation, shall not be a member.

4.02. Classes. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners (as defined in Section 4.01) with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B member(s) 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 when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership.

4.02. Non-Profit Corporation. WOODRIDGE ESTATES PROPERTY OWNERS ASSOCIATION, INC., a non-profit corporation, has been (or will be) organized and it shall be governed by the Articles of Incorporation and Bylaws of said Association; and all duties, obligations, benefits, liens and rights hereunder in favor of the Association shall vest in said corporation.

4.03. Bylaws. The Association has adopted or may adopt whatever Bylaws It may choose to govern the organization or operation of the Subdivision and the use and enjoyment of the Lots and Common Areas, provided that the same are not in conflict with the terms and provisions hereof.

4.04. Owner's Right of Enjoyment. Every Owner shall have a beneficial interest of use and enjoyment in and to the Common Areas and such right shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) the right of the Association, with respect to the Common Areas, to limit the number of guests of Owners;
- (b) the right of the Association, in accordance with its Articles and Bylaws, to (i) borrow money for the purpose of improving and maintaining the Common Areas and facilities (including borrowing from the Developer or any entity affiliated with the Developer) and (ii) mortgage said property, however, the rights of such mortgagee of said property shall be subordinate to the rights of the Owners hereunder;
- (c) the right of the Association to suspend the Member's voting rights and the Member's right to use any recreational facilities within the Common Areas during any period in which the Maintenance Charge or any assessment against his Lot remains unpaid;
- (d) the right of the Association to suspend the Member's voting rights and the Member's right to use any recreational facilities within the Common Area for a period of up to sixty days following the cessation or curing of such infraction. Any such suspension may occur only after notice to the Member and a hearing by the Board of Directors regarding the infraction or violation by such Member of this Declaration.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

5.01. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association all annual assessments or charges as set by the Association. The annual assess-

ment, sometimes referred to herein as the "Maintenance Charge," together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Provided however, this provision shall not be construed as to assess the Veterans Land Board or the State of Texas, who shall not be required to pay any such assessment. Any such assessments shall be the personal obligation of the Veteran purchaser, his successors, heirs and assigns. Any lien imposed by these restrictive covenants shall not be imposed on the Veterans Land Boards interest in the property.

5.02. Purpose of Assessments. The Maintenance Charge levied by the Developer or the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Owners of the Subdivision which hereafter may become subject to the jurisdiction of the Association. In particular, the Maintenance Charge shall be used for any improvement or services in furtherance of these purposes and the performance of the Association's duties, including the maintenance of any Common Areas, any Drainage Easements and the establishment and maintenance of a reserve fund for maintenance of any Common Areas. The Maintenance Fund may be expended by the Developer or the Association for any purposes which, in the judgment of the Association, will tend to maintain the property values in the Subdivision, including, but not limited to, providing funds for the actual cost to the Association of all taxes, insurance, repairs, energy charges, replacement and maintenance of the Common Area as may from time to time be authorized by the Association. Except for the Association's use of the Maintenance Charge to perform its duties described in this Declaration and in the Bylaws, the use of the Maintenance Charge for any of these purposes is permissive and not mandatory. It is understood that the judgment of the Association as to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

5.03. Initial Amount of the Annual Assessment. The initial Annual Maintenance Charge shall be \$100.00 per Lot. In November of each year the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot for the next budget year and shall at that time designate the due dates of the assessments and prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to

inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. Unless approved by a majority of the members at a special meeting of the Association, the Board of Directors may not increase the Annual Maintenance Charge by more than 10% greater than the Maintenance Charge in the previous year. The Association shall, upon demand at any time, and for a reasonable charge, furnish to any Owner liable for said assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

5.04. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may, at the Association's or Declarant's option, be collected on a semi-annual or annual basis.

- (a) The Maintenance Charge shall be used to create a fund to be known as the "Maintenance Fund," which shall be used as herein provided; and each such Maintenance Charge (except as otherwise hereinafter provided) shall be paid by the Owner of each Lot (or residential building site) to the Association. The Maintenance Charge for the year of purchase shall be pro-rated at closing and then shall be paid annually, in advance, on or before the first day of the first month of each calendar year. Provided, however if such owner owns more than one Lot in the subdivision, such Owner shall pay only twice the assessment of one (1) Lot no matter how many Lots are owned.
- (b) Any Maintenance Charge not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum rate permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the hereinafter described lien against the Owner's Lot. No Owner may waive or otherwise avoid liability for the Maintenance Charge by non-use of any Common Areas or recreational facilities available for use by Owners of the Subdivision or by the abandonment of his Lot.
- (c) The initial amount of the Maintenance Charge applicable to each Lot will be determined by the Developer. All other matters relating to the Maintenance Charge and the collection, expenditures and administration of the Maintenance Fund shall be de-

terminated by the Developer or the Board of Directors of the Association, subject to the provision hereof.

5.05. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the 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, repair or replacement of the Common Area provided that any such assessment shall have the assent of Three-Fourths (3/4) of the votes for each Class of members who are voting in person or by proxy at a meeting duly called for this purpose.

5.06. Notice and Quorum for Any Action Authorized Under Sections 5.03 or 5.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.03 or Section 5.04 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast Seventy-five Percent (75%) 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 meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.07. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the Lot to an Owner, other than the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be sent to every Owner subject thereto.

5.08. Creation of Lien and Personal Obligation. In order to secure the payment of the Maintenance Charge, and other charges and assessments hereby levied, each Owner of a Lot in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Lot which may be foreclosed on by non-judicial foreclosure and pursuant to the provisions of Section 51.002 of the Texas Property Code (and any successor statute); and each such owner hereby expressly grants the Association a power of sale in connection therewith. The Association shall, whenever it proceeds with non-judicial foreclosure pursuant to the provisions of said Section 51.002 of the Texas Property Code and said power of sale, designate in writing a Trustee to post or cause to be posted

all required notices of such foreclosure sale and to conduct such foreclosure sale. The Trustee may be changed at any time and from time to time by the Association by means of written instrument executed by the President or any Vice-President of the Association and file for record in the Official Records of Kendall County, Texas. In the event that the Association has determined to non-judicially foreclose the lien provided herein pursuant to the provisions of said Section 51.002 of the Texas Property Code and to exercise the power of sale hereby granted, the Association, or the Association's agent, shall give notice of foreclosure sale as provided by the Texas Property Code as then amended. Upon request by the Association, Trustee shall give any further notice of foreclosure sale as may be required by the Texas Property Code as then amended, and shall convey such Lot to the highest bidder for cash by the General Warranty Deed. Out of the proceeds of such sale, if any, there shall first be paid all expenses incurred by the Association in connection with such default, including reasonable attorney's fees and a reasonable trustee's fee; second, from such proceeds there shall be paid to the Association an amount equal to the amount in default; and third, the remaining balance shall be paid to such Owner. Following any such foreclosure, each occupant of any such Lot foreclosed on and each occupant of any improvements thereon shall be deemed to be a tenant at sufferance and may be removed from possession by any and all lawful means, including a judgment for possession in an action of forcible detainer and the issuance of writ of restitution thereunder. In the event of non-payment by any Owner of any Maintenance Charge or other charge or assessment levied hereunder, the Association may, in addition to foreclosing the lien hereby retained, and exercising the remedies provided herein, upon ten (10) days prior written notice thereof to such non-paying Owner, exercise all other rights and remedies available at law or in equity.

It is the intent of the provisions of this Section 5.08 to comply with the provisions of said Section 51.002 of the Texas Property Code relating to non-judicial sales by power of sale and, in the event of the amendment of said Section 51.002 of the Texas Property code hereafter, the President or any Vice-President of the Association, acting without joinder of any other Owner or mortgagee or other person may, by amendment to this Declaration filed in the Real Property Records of Kendall County, Texas, amend the provisions hereof so as to comply with said amendments to Section 51.002 of the Texas Property Code.

5.09. Notice of Lien. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim or lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued

thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such release of lien instrument.

5.10 Liens Subordinate to Mortgages. The lien described in this Article V shall be deemed subordinate to a first lien or other liens of any bank, insurance company, savings and loan association, university, pension and profit sharing trusts or plans, or any other third party lender, including Developer, which may have heretofore or may hereafter lend money in good faith for the purchase or improvement of any Lot and any renewal, extension, rearrangement or refinancing thereof. Each such mortgagee of a mortgage encumbering a Lot who obtains title to such Lot pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Lot free and clear of any claims for unpaid Maintenance Charges or other charges of assessments against such Lot which accrued prior to the time such holder acquired title to such Lot. No such sale or transfer shall relieve such holder from liability for any Maintenance Charge or other charges or assessments thereafter becoming due or from the lien thereof. Any other sale or transfer of a Lot shall not affect the Association lien for Maintenance Charges or other charges or assessments. The Association shall make a good faith effort to give each such mortgagee sixty (60) days advance written notice of the Association's proposed foreclosure of lien described in Section 5.08 hereof, which notice shall be sent to the nearest office of such mortgagee by prepaid United States registered or Certified mail, return receipt requested, and shall contain a statement of delinquent Maintenance Charges or other charges or assessments upon which the proposed action is based provided, however, the Association's failure to give such notice shall not impair or invalidate any foreclosure conducted by the Association pursuant to the provisions of this Article V.

ARTICLE VI BINDING EFFECT AND DURATION OF THIS DECLARATION

The covenants, conditions and restrictions provided for in this Declaration

shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant or the Owner of any Lot, their heirs, representatives, successors and assigns for a term of fifty (50) years from the date this Declaration is recorded, after which time the same shall be automatically extended for successive periods of ten (10) years.

ARTICLE VII AMENDMENT OF THIS DECLARATION

Except as expressly provided herein, the provisions of this Declaration may be amended during the first fifty (50) year period only by an instrument signed by not less than seventy per cent (70%) of the Owners and thereafter by an instrument signed by not less than sixty per cent (60%) of the Owners. Any amendment must be properly recorded. Notwithstanding the foregoing, Declarant reserves the exclusive right to amend this Declaration until the sale by Declarant of twelve (12) Lots, following the date of this Declaration.

ARTICLE VIII MISCELLANEOUS

8.01. Severability. Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

8.02. 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.

8.03. Enforcement. Any Owner at his or her expense, the Architectural Committee, or the Declarant at its expense, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges, assessments and all other provisions contained in this Declaration. In the event the Architectural Committee seeks to enforce the terms of this Declaration, it shall only be permitted or required to do so to the extent that funds have been voluntarily contributed by Lot Owners for such purpose. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.04. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible of more than one or con-

flicting interpretations, then the interpretation which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

8.05. Omission. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.

8.06. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner in the Official Records of Kendall County, Texas.

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

8.08. Exemption of Declarant. Notwithstanding, any provision in this Declaration to the contrary, neither Declarant nor any of Declarant's activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without, in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct any and alter drainage patterns and facilities, to construct any other types of Improvements anywhere on the Property.

8.09. Annexation.

- (a) Additional land or lands may be annexed to the Property with the consent of two-thirds (2/3) of each class of Members, and the approval of the owner(s) of the land to be annexed.
- (b) Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Declarant shall have the right, without the consent of any other Owners or any mortgagee, to bring within the scheme of the Declaration, in one (1) or more future stages, phases, sections or additions, those additional lands or portions within ten (10) years of the date of recording of this instrument, further, any land an-

annexed to the Property and subject to this Declaration may be acquired (by gift, purchase, or otherwise) and/or designated as Common Areas by the Association without the consent of any Owners or any mortgagee. Nothing in this Declaration shall be construed to represent that Declarant, or its successors or assigns, are under any obligation to add or annex additional lands to those subject to this Declaration.

- (c) Any such additions shall be developed in a manner similar to the development of the Property in accordance with a general plan of development under which the architectural standards prevailing within the Property will be continued in such annexed lands, the dwellings to be constructed on Lots within such annexed lands will be similar to the residential dwellings constructed on the Property, and the Lots within the annexed lands will become subject to assessment in the same manner as then prevailing for the Property. All the provisions of this Declaration shall apply to the lands being annexed with the same force and effect as if said lands were originally included in the Property subject to this Declaration.
- (d) The additions authorized under this Section shall be made by filing of record: (a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall extend the scheme of the covenants and restrictions of the Declaration to such lands and (b) a deed from Declarant to the Association which shall convey to the Association all of the area within such additions (except for the Lots therein) as Common Areas for the benefit and use of the Owners, with reservation of Declarant's rights set forth herein.

8.09. Disclaimer

EXCEPT AS SPECIFICALLY STATED HEREIN OR EXPRESSLY MADE IN A CONTRACT TO SELL A LOT TO AN OWNER, DECLARANT HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTY, AND REPRESENTATIVE, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, AS TO OR INCLUDING BUT NOT BY WAY OF LIMITATION, THE WATER, SOIL GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE PROPERTY, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY ELECT TO CONDUCT THEREON, OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT

THERETO, OR ANY OBLIGATION OR ANY OTHER MATTER OR THING RELATED TO OR AFFECTING THE SAME, (II) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS CONSTRUCTED BY THE DECLARANT AND (III) THE ENFORCEABILITY OF THE TERMS, CONDITIONS OR RESTRICTIONS SET FORTH IN THIS DECLARATION AND (IV) THE MARKETABILITY OR VALUE OF ANY IMPROVEMENT UPON ITS RESALE.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the 21 day of September, 2004.

DECLARANT:

Ricky T. Stewart
RICKY T. STEWART

Debra G. Stewart
DEBRA G. STEWART

STATE OF TEXAS

COUNTY OF KENDALL

This instrument was acknowledged before me on 21st day of September, 2004 by Ricky T. Stewart and Debra G. Stewart.

Janice A. Foster
Notary Public, State of Texas