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**SUPPLEMENTAL**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

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

**WOODRIDGE ESTATES, UNIT TWO**

WHEREAS, RICKY AND DEBRA STEWART, hereinafter collectively called the "Declarant", is the holder of fee simple title to certain real property located in Kendall County, Texas, known as WOODRIDGE ESTATES, UNIT TWO, according to the plat recorded in Volume 5, Pages 9, of the Plat Records of Kendall County, Texas, more particularly described as follows:

Being a replat of Lot 16, Woodridge Estates, containing 175.83 acres and located in the J. A. Zambrano Survey No. 17, Abstract No. 543, Kendall County, Texas, as shown on plat recorded in Volume 4, Pages 298-301, Kendall County Plat Records, creating 24 lots to be known as Woodridge Estates, Unit Two, having approximately 3612 feet of new roads which contain 4.98 acres.

Replat of Lot 16, Woodridge Estates, containing 175.83 acres, as shown on a plat recorded in Volume 4, Pages 298-301, Kendall County Plat Records, into Lots 16A through 28, 30 through 40, and a property owners park, Woodridge Estates, Unit Two.

- Lot 16A    4.25 acres
- Lot 17     4.25 acres
- Lot 18     4.25 acres
- Lot 19     4.25 acres
- Lot 20     4.25 acres
- Lot 21     4.12 acres
- Lot 22     3.51 acres
- Lot 23     6.32 acres
- Lot 24     4.60 acres
- Lot 25     4.89 acres
- Lot 26     10.67 acres
- Lot 27     14.99 acres

- Lot 28 16.88 acres
- Lot 30 21.69 acres
- Lot 31 5.96 acres
- Lot 32 3.75 acres
- Lot 33 3.28 acres
- Lot 34 6.01 acres
- Lot 35 3.57 acres
- Lot 36 4.06 acres
- Lot 37 3.10 acres
- Lot 38 3.20 acres
- Lot 39 3.03 acres

and, the tract designated as the Property Owner's Park, containing 22.22 acres, more or less, as described on the plat of said subdivision recorded in Volume 5, Page 9, Plat Records of Kendall County, Texas.

WHEREAS, the Declarant will convey the above described properties, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth and to create thereon a resident community with designated "Tracts" and "Common Area" (as those terms are defined herein) for the benefit of the present and future owners of said Tracts;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values 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. Declarant further desires to annex the Property described herein to the subdivision known as WOODRIDGE ESTATES, a subdivision in Kendall County, Texas, as shown on a plat of said subdivision filed for record in Volume 4, Page 298-301 of the Plat Records of Kendall County, Texas, pursuant to the provisions of Article XIII, Section 8.09 (b) of the Declaration of Covenants, Conditions and Restrictions of WOODRIDGE ESTATES, as recorded in Volume 886, Page 452 of the Official Records of Kendall County, Texas.; and

WHEREAS, WOODRIDGE ESTATES PROPERTY OWNERS ASSOCIATION, INC., has been or will be 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 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. Declarant also declares that WOODRIDGE ESTATES, UNIT TWO shall be subject to the jurisdiction of the "Association" (as hereinafter defined). Declarant further declares that the Property is annexed as an addition to WOODRIDGE ESTATES, as shown on a plat of said subdivision filed for record in Volume 4, Page 298-301 of the Plat Records of Kendall County, Texas. Declarant further declares that all of the provisions of the Declaration of Covenants, Conditions and Restrictions of WOODRIDGE ESTATES, as recorded in Volume 886, Page 452 of the Official Records of Kendall County, Texas, shall apply to the Property subject to this Declaration with the same force and effect as if said lands were originally included in WOODRIDGE ESTATES, as specifically modified 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, UNIT TWO 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 tracts 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 Tract.

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, outbuildings, 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 Tract 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.
- 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, UNIT TWO 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.
- 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. "Tract" shall mean and refer to any plot of land identified as a tract or home site on the Plat of WOODRIDGE ESTATES, UNIT TWO. For purposes of this instrument, "Tract" 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, UNIT TWO, 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 Tracts. Each of the tracts 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 tract shall contain the following minimum square feet of living area, exclusive of porches, garages, balconies, terraces, breezeways, accessory buildings and the like: (a) 1800 square feet for one-story or split-level units; or (b) 2000 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 1500 square feet of living area.

2.03. Subdividing. No tract shall be re-subdivided into smaller tracts by any Owner; provided, however, that this restriction shall not prevent correction deed or other documents to resolve boundary disputes.

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

2.05. Workmanlike Manner. Each structure constructed, placed or erected on a tract 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 tract nor shall anything be done thereon which may be, or upon the repeated occurrence thereof become, an annoyance or nuisance to the other tract owners.

2.07. Illegal Activities. None of the tracts 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. On all tracts in excess of ten (10) acres and which cross the existing creek, the Owner shall have twelve (12) months after acquisition of title to a Tract to cover the temporary entrance with concrete in such a manner as approved by the Architectural Committee.

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 Tract 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 tract lines of each tract 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 Tract or street. The Architectural Committee may waive the set back requirements of this Section if 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. Such variance must be in writing and approved by the Architectural Committee prior to the construction of such Structure.

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.

2.11. Foundations. All footing, piers and foundations of the main dwelling unit on any tract 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 tract 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 tract lines of each tract in the subdivision. Any Tract that is in excess of ten (10) acres may have a separate guest house and a servant's quarter of the same material and workman-like quality as the main house as long as the structure does not exceed 1,200 square feet. 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 tract 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.

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 tract that serves or is used as a thoroughfare or path from one tract to another or from one tract 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 tract that serves or is used as a thoroughfare or path from any road or land outside the subdivision that would connect to any tract or road within the platted subdivision without the express prior written approval of the Architectural Committee.

2.17. Rubbish and Debris. No tract 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 tract, Common Area, private street, easement or drainage area in the subdivision. No tract may be used for storage of any equipment or materials prior to construction of the residence on said tract, save and except materials and equipment used in construction of the residence during construction.



2.18. Lawns and Grounds. All residences and vacant tracts 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 tract 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 Tract.

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 tract 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 Tract, 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 tract 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 tract, street or Common Area, unless concealed from view; provided, however, it is understood that during construction of a structure on a tract pursuant to the terms of this Declaration, such equipment or machinery may be parked at or near such tract temporarily.

2.22. Signs. No signs of any kind shall be displayed to the public view on any tract except one professional sign of not more than two (2) square feet indicating the name of the tract 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 sale period not exceeding nine (9) square feet of surface area. Sales flags shall not be placed on any tract.

2.23. Hunting. No hunting shall be permitted on any tract 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 tract. No more than six (6) domestic pets (dogs &/or cats) may be kept on any Subdivision tract. No more than one (1) head of livestock and three (3) head of fowl per acre shall be permitted on any tract. 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 an 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 tract.

2.27. Prohibited Activities. No commercial business venture or activity shall be conducted on any tract. 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 tract 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 tract 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 tract, 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 tract 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 tract 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 tracts have been sold by Declarant following the date of this Declaration. Thereafter, the Committee shall be chosen by a majority vote of all tract owners, where each tract 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 tracts 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 Commit-

tee, the remaining member or members shall have full authority to approve or disapprove such plans, specifications and plot plans.

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 Tract 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 Tract or Tracts 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 Tract owned. When more than one person holds an interest in any Tract, all such persons shall be members. The vote for such Tract shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Tract.

Class B: The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Tract 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 Tracts 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 Tract, 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 Tract 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 Tract owned within the Property, hereby covenants and each Owner of any Tract 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 assessment, 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 Tract. In November of each year the Board of Directors of the Association shall fix the amount of the annual assessment against each Tract for the next budget year and shall at that time designate the due dates of the assessments and prepare a roster of the Tracts 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 Tracts 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 Tract (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 tract in the subdivision, such Owner shall pay only twice the assessment of one (1) tract no matter how many tracts 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 Tract. 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 Tract.
- (c) The initial amount of the Maintenance Charge applicable to each Tract 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 determined 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 Tract on the first day of the month following the conveyance of the Tract 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 Tract in the Subdivision, by such party's acceptance of a deed thereto, hereby grants to the Association a contractual lien on such Tract 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 Tract 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 rea-

sonable 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 Tract 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 Tract 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 Tract 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, in-

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 Tract and any renewal, extension, rearrangement or refinancing thereof.* Each such mortgagee of a mortgage encumbering a Tract who obtains title to such Tract pursuant to the remedies provided in the deed of trust or mortgage or by judicial foreclosure shall take title to the Tract free and clear of any claims for unpaid Maintenance Charges or other charges of assessments against such Tract which accrued prior to the time such holder acquired title to such tract. 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 Tract 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 tract, 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 ex-

clusive right to amend this Declaration until the sale by Declarant of eighteen (18) tracts, 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 tract 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 conflicting 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.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this the 20 day of October, 2005.

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 20<sup>th</sup> day of October, 2005 by Ricky T. Stewart and Debra G. Stewart.

Camille Rose  
Notary Public, State of Texas

Filed for Record in:

Kendall County  
Darlene Herrin  
County Clerk

On: Oct 20, 2005 at 03:56P

Document Number: 00201814  
Total Fees : 91.00

Receipt Number - 80616  
By Deputy: Paula Pfeiffer

This Document has been received by this Office  
for Recording into the Official Public Records.  
We do hereby swear that we do not discriminate  
due to Race, Creed, Color, Sex or National  
Origin.

*Cetac*

**STATE OF TEXAS  
COUNTY OF KENDALL**

I hereby certify that this instrument was filed in File Number  
Sequence on the date and the time stamped hereon and  
was duly recorded in the Official Records of Kendall County,  
Texas on: **OCT 21 2005**



**DARLENE HERRIN, County Clerk**  
Kendall County, Texas

By: *[Signature]* Deputy