

**FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS**

**FOR**

**GRAEMONT ESTATES**

This Amended and Restated Declaration of Covenants, Restrictions and Conditions (herein called the "Deed Restrictions") is made and approved as of the 16<sup>th</sup> day of May, 2016 by the Board of Directors and the duly authorized vote of the Owners of the Lots and Property in Graemont Estates Homeowners Association, Inc., at the Annual Meeting of the Owners called and held on May 10, 2016, for the purpose of amending the restrictive covenants of Graemont Subdivision, the vote of such Owners being affirmatively set forth in the minutes of the Board of Directors for such Annual Meeting, a copy of which is attached hereto and incorporated herein for all purposes.

WITNESSETH:

WHEREAS, Graemont Estates Homeowners Association, Inc., comprises all of those certain lots, tracts or parcels of real property described in certain Plats recorded in the Plat Records of Smith County, Texas, and attached hereto as Exhibit "A1, A2, and A3":

WHEREAS, restrictive covenants for Unit I of Graemont Subdivision have heretofore been recorded in Cabinet D, Slide 149-B of the Official Public Records of Smith County, Texas;

WHEREAS, restrictive covenants for Unit II of Graemont Subdivision have heretofore been recorded in Cabinet D, Slide 294-A Official Public Records of Smith County, Texas;

WHEREAS, restrictive covenants for Unit III of Graemont Subdivision have heretofore been recorded in Cabinet E, Slide 12-A Official Public Records of Smith County, Texas;

WHEREAS, the Owners of the Lots and Property in Units I, II, and III of Graemont Subdivision now desire to amend the respective restrictive covenants for each of Units I, II, and III of said subdivision and to create one document containing the uniform restrictive covenants for all Units of the Graemont Subdivision;

THEREFORE, in order to enable the Owners, hereinafter defined, to implement a general plan of development and accomplish the development of such lands as a residential development of high quality which interfaces with the natural beauty of the East Texas landscape, the Owners, hereinafter defined, desire to subject the Property to the covenants, restrictions and conditions, hereinafter set forth (herein collectively called the "Deed Restrictions"), and the Owners, hereinafter defined, hereby declare that the property shall be held, sold and conveyed subject to the following:

**ARTICLE I**  
**DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract, or agreement.

1.2. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Graemont Estates Homeowners Association, Inc., as filed with the Secretary of State of the State of Texas.

1.3. "Association": Graemont Estates Homeowners Association, Inc., a Texas non-profit corporation, its successors or assigns.

1.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article X to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Texas corporate law.

1.6. "Builder": Any Person who purchases one (1) or more Units for the purpose of constructing improvements for later sale to consumers or purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

1.7. "Bylaws": The Bylaws of Graemont Estates Homeowners Association, Inc.

1.8. "Common Area": All real and personal property which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.9. "Common Expenses": The actual and estimated expenses incurred or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws, and the Articles of Incorporation.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors, and the Architectural Control Committee.

1.11. "Member": A Person entitled to membership in the Association.

1.12. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.13. "Mortgagee": A beneficiary or holder of a Mortgage.

1.14. "Mortgagor": Any Person who gives a Mortgage.

1.15. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.16. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.17. "Properties": The real property described on any plat attached hereto as Exhibit "A1, A2, and A3" together with such additional property as is subjected to this Declaration in accordance with Article IX.

1.18. "Public Records": The Public Real Estate Records of Smith County, Texas.

1.19. "Special Assessment": Assessments levied in accordance with Section 10.4.

1.20. "Specific Assessment": Assessments levied in accordance with Section 10.5.

1.21. "Supplemental Declaration": An instrument filed in the public records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.22. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Areas, or property dedicated to the public. Following the date that this document is recorded with the real property records of Smith County, any owner that acquires multiple lots shall be entitled to one (1) vote per lot acquired, along with one (1) assessment per lot acquired, regardless of any subsequent replatting.

1.23. "Private Streets": Such term shall mean the private drive designated as Lot 12, NCB 1474-K and Lot 3A, NCB 1474-M on the Plat of the Association, and further designated as Graemont Boulevard, Equestrian Lane and Dressage Lane.

## **ARTICLE II**

### **PROPERTY RIGHTS**

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and

enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) The right of the Board to suspend the right of an Owner to use any potential and/or future recreational facilities within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or rules of the Association after notice pursuant to the Bylaws;
- (e) The right of the Association, acting through the Board, to sell, convey, or transfer all or any part of the Common Area, or to dedicate such property pursuant to Section 4.7, upon approval of a simple majority vote of the homeowners present at a meeting called for such purpose;
- (f) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend their right of use and enjoyment to the members of their family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases their Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt. The Association shall be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles, and the laws of the State of Texas.

3.2. Membership. Every Owner shall be a member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3 and in the Bylaws and all such co-Owners shall be jointly and severally obligated to

perform the responsibilities of Owners. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an Owner which is a corporation, partnership, or other legal entity may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. Each member shall, promptly upon purchase of a Lot, perform the following:

(a) Complete and submit to the Association a registration form including such information as may be required by the Association; and

(b) Pay to the Association a registration fee in the amount of \$1,000.00 (or such other amount as may be determined by the Board of Directors from time to time).

3.3. Voting. The Association shall have one (1) class of membership, entitled Class "A".

(a) Class "A". Class "A" Members shall be all Owners. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.2 provided there shall be only one (1) vote per Unit.

(b) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Owner of such Unit.

In any situation where a Member is entitled personally to exercise the vote for their Unit and there is more than one (1) Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such advice, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it in a contradictory or unclear manner.

#### **ARTICLE IV**

#### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws and consistent with the Community-Wide Standard.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. Such property shall be maintained by the Association at its expense for the benefit of its Members, subject to (1) any restrictions set forth in the deed, (2) the governing documents of the Association, or (3) other

instrument transferring such property to the Association.

4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, the Bylaws, or rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and use of any Common Area. In addition, the Association, through the Board, in accordance with the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration or the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including without limitation attorney's fees and court costs, reasonably incurred in such action from the violating Owner.

The Association, by contract or other agreement, may enforce county and city ordinances, if applicable, and permit the appropriate governmental entity to enforce ordinances on the Properties for the benefit of the Association and its Members.

4.4. Implied Rights, Board Authority. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws, controlling Federal, State, County, or municipal statute, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental Interests. The Association, through its Board of Directors, may designate sites within the Properties for fire, police, water, other utility facilities, parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site.

4.6. Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorney's fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he/she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Areas. The Association may dedicate portions of the Common Areas

to Smith County, Texas, or to any other local, state, or federal governmental entity.

4.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Properties. The Association, shall not in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system, or other monitoring system or measure cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants, that the Association, its Board of Directors and committees not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death, and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

## **ARTICLE V** **MAINTENANCE**

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) All landscaping and other flora, and improvements, including any private streets, bike pathways/trails, situated upon the Common Area;

(b) Landscaping within public rights-of-way within or abutting the Properties;

(c) Such portions of any additional property, including, without limitation, the trail system serving as an amenity to the Properties and property subsequently deeded, transferred, assigned, or gifted to the Association, included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All streams, greenbelts and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any lighting, conduits, and similar equipment installed therein or used in connection therewith;

(e) Lots 5, NCB 1474-L; Lot 10, NCB 1474-K; Lot 17, NCB 1474-K; Lot 6, NCB 1474-R; Lot 1A, NCB 1474-U; Lot 2A, NCB 1474-M; Lot 9, NCB 1474-U; Lot 1A, NCB 1474-M; Lot 6, NCB 1474-M; and Lot 11, NCB 1474-M shall be utilized as "Greenbelt" lots. The said lots shall be maintained as a Greenbelt and shall not be used for any other purpose or improved, except for (i) sanitary sewer, storm sewer and other public utilities within, the easement areas designated on the Plat; (ii) walking trails and other similar improvements consistent with maintenance of the said lots as a Greenbelt; and (iii)

any other improvements approved by the Board; and

(f) Any property and facilities owned by the Association and its Members with such property and facilities to remain a part of the Area of Common Responsibility and be maintained by the Association.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the affirmative vote of 67% of the votes in attendance at a duly called meeting wherein quorum is present.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain their Unit and all structures, parking areas, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails properly to perform their maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association and/or Owner shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its own maintenance responsibilities.

## ARTICLE VI INSURANCE AND CASUALTY LOSSES

### 6.1. Association Insurance.



(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis, or comparable coverage by whatever name denominated, for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(iv) Directors and officers liability coverage, provided; however, the Association shall not be required to purchase such coverage if a majority vote of the Board of Directors vote to not purchase such coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Smith County, Texas area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 10.5.

All insurance coverage obtained by the Board shall:

- (i) Be written with a company authorized to do business in the State of Texas;
- (ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association, and its Members;
- (iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
- (iv) Contain an inflation guard endorsement; and
- (v) Include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall be required to use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- (ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
- (v) An endorsement requiring at least thirty (30) days' prior written notice to the Association and their lenders, if any, of any cancellation, substantial modification, or non-renewal;
- (vi) A cross liability provision; and

(vii) A provision vesting in the Board exclusive authority to adjust losses provided; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. "Repair or reconstruction," as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least 67% of the total Class "A" votes in the Association, decide within ninety (90) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 90-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat, attractive, and landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, including, but not limited to, payment to any Mortgagee of the Common Area, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on their Unit, less a reasonable deductible, and liability insurance.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising their Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat, attractive, and landscaped condition consistent with the

Community-Wide Standard.

**ARTICLE VII**  
**NO PARTITION**

Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

**ARTICLE VIII**  
**CONDEMNATION**

If any part of the Common Area shall be taken, or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Owners representing at least 67% of the total Class "A" votes in the Association, by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Owners representing at least 67% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine, including utilization for reserve fund, to defray other common expenses, management or professional fees, or payment of governmental dues, penalties, and payments.

**ARTICLE IX**  
**ANNEXATION OF PROPERTY**

9.1. Annexation With Approval of Membership. The Association may annex real property located adjacent to and contiguous with the Properties with the consent of the owner of such property, the affirmative vote of Owners representing at least 67% of the Class "A" votes of the Association represented at a meeting duly called for such purpose.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

9.2. Additional Covenants and Easements. Any annexed property serving any residential purpose shall be subject to the entire set of governing documents for the Association on file with the real property records of the county where the property exists, including any amendments thereto. Any annexed property not of a residential purpose shall also be subject to the governing documents referenced in the foregoing, subject to any exception, variance, or modification of the terms of this Declaration as it applies to such additional property in order to reflect the different character and intended use of such property.

## ARTICLE X ASSESSMENTS

10.1. Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units, (b) Special Assessments as described in Section 10.4, and (c) Specific Assessments as described in Section 10.5. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest, at a rate not to exceed the highest rate allowed by applicable law, computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's costs, and fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 10.6. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, other than a transfer by Mortgage to a Mortgagee, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit pursuant to the power of sale or foreclosure rights contained in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Board shall, upon request, furnish to any contract purchaser of a Unit or any Owner liable for any type of assessment a certificate in writing signed by an authorized agent of the Association, including but not limited to an officer or management agent, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise

provides, the Base Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on their Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Board, on its own or through a management company and/or agent, shall prepare and record a Payment Plan Policy in compliance with state, county, and municipal statute with same being filed in the real property records office of any county where a portion of the Association exists.

10.2. Computation of Base Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 10.3.

The Base Assessment shall be levied equally against all Units and at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.7 on the first (1<sup>st</sup>) day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total Class "A" votes in attendance at a meeting called for such purpose. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.3. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget with respect to amount and timing by annual Base Assessments over the budget period.

10.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire membership, and upon all units shown on the recorded agreed plat of the Association. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners

representing at least 51% of the total votes allocated to Units which will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board.

10.5. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit, (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, or (c) that are expressly permitted by the terms of the Declaration. The Association may also levy a Specific Assessment against any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, other covenants, the Articles, the Bylaws, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing.

10.6. Lien for Assessments. The Association does hereby expressly acknowledge that the Developer established, reserved, created and subjected each Unit to a perfected contractual lien in favor of the Association to secure payment of delinquent assessments, as well as interest, late charges, subject to the limitations of Texas law, and costs of collection, including attorney's fees and costs. Such lien is superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record, meaning any recorded Mortgage with first priority over other Mortgages, made in good faith and for value. The developer, entitled "Declarant" in the original governing documents, assigned such lien to secure payment of delinquent assessments to the Association without recourse, and reserved for the Association the right to pursue all statutory and contractual liens solely for non-payment of Membership fees. The lien shall be self-operative, and shall continue in inchoate form without being reserved or referenced in any deed or other documents and without any other action required. Such lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure in accordance with Texas law. The Association may assign such lien rights as to any or all Units to a lender as security for any loan made to the Association.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability, or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, non-judicial foreclosure proceedings in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law, in like manner of any deed of trust on real property.

Each Owner hereby grants to the Association, whether or not it is so expressed in the deed or other instrument conveying such Unit to the Owner, a power of sale to be exercised in accordance with Tex. Prop. Code Ann. Section 51.002 (Vernon 1984), as it may be amended or any other applicable law.

At any foreclosure proceeding, any Person, including but not limited the Association and any Owner shall have the right to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following

foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no assessment shall be levied on it, and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 10.7, including such acquirer, its successors and assigns.

10.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit owned by Persons on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

10.8. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

10.9. Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

## ARTICLE XI ARCHITECTURAL STANDARDS

11.1. General. No structure, including, but not limited to, buildings, signs, walls, and mailboxes, shall be placed, erected, or installed upon any Unit, and no improvements, including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials, shall take place except in compliance with this Article, and approval of the appropriate committee under Section 11.2. Notwithstanding this, the Board of Directors may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.



Any Owner may remodel, paint or redecorate the interior of structure(s) of a Unit without approval provided such improvements are not visible from outside such structure(s). Modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or licensed building designer.

This Article shall not apply to improvements to the Common Area by or on behalf of the Association.

11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications construction and modifications under this Article shall be handled by the committees as described in subsection (a) below. The members of committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board of Directors, or the Architectural Control Committee acting with authority to approve and enforce the Design Guidelines, may establish and charge a reasonable fee for review of applications hereunder and may require such fees to be paid in full prior to review.

(a) Architectural Control Committee. The Architectural Control Committee ("ACC") shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties, along with modifications, additions, or alterations made on or to existing structures on Units or containing Units and the adjacent open space. The Board may, at its option, appoint the members of the ACC, who shall thereafter serve and may be removed in the Board's discretion.

### 11.3. Guidelines and Procedures.

(a) The Board of Directors, and ACC shall be responsible for reviewing plans in accordance with the Design Guidelines. The Board of Directors shall be the deciding authority for resolving any questions the ACC may have as to the interpretation or application of the Design Guidelines.

Each Owner acknowledges that the Design Guidelines may be amended and that the Board of Directors shall have amendment authority for the Design Guidelines including the right to develop modification guidelines for existing structure exterior improvements. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced.

The Design Guidelines shall be made available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in

accordance with such Design Guidelines. The Design Guidelines shall be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, and intended use.

With regard to modifications, the Board of Directors or ACC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed modifications and improvements shall be submitted to the Board of Directors or ACC for review and approval, or disapproval. In addition, information concerning irrigation systems, drainage, lighting, and other features of proposed construction shall be submitted for consideration. In reviewing each submission, the Board of Directors or ACC may consider the Design Guidelines, quality of design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

In the event that the Board of Directors or ACC fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved as submitted. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the Board of Directors or ACC pursuant to Section 11.5. Any new construction must be completed within one (1) year of the approval date. Any modification of an existing structure must be completed within six (6) months of the approval date.

11.4. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, are site specific unless otherwise noted, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

11.5. Variance. The Board of Directors or ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) stop the Board or ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.6. Limitation of Liability. Neither the Board of Directors nor ACC shall be liable to anyone submitting plans for approval in accordance herewith or to any other Person for damages, whether direct, indirect, consequential, or otherwise, arising out of or in connection with: (a) the approval or disapproval or failure to approve or disapprove any such plans, (b) enforcement or failure to enforce any site

maintenance or other requirements hereof, (c) the approval or disapproval of, or failure to approve or disapprove, any architectural, landscaping, development or other plans for improvements to any property adjacent to, or situated on or in the proximity of the Properties, (d) the development or construction of, or the failure to develop or construct, any improvements, including landscaping, on lands adjacent to or in the proximity of the Properties, or (e) defects, whether latent or otherwise, in such plans. Anyone submitting plans for approval agrees not to seek any such damages against the Board of Directors, or ACC. In addition, each Owner shall release and hold harmless the Board of Directors or ACC and the members thereof from any and all liability, including attorneys' fees and court costs actually incurred, regardless of whether suit is brought or any appeal is taken therefrom, arising out of any approval given or denied by the Board of Directors, or ACC under this Article.

Review and approval of any application pursuant to this Article is made on the basis of the Design Guidelines and aesthetic considerations and neither the Board of Directors nor ACC shall bear any responsibility for ensuring the value of a Unit, or the structural integrity, workmanship, quality or soundness of approved construction or modifications, nor for ensuring compliance with building codes, engineering and architectural standards, and other governmental requirements. Each Owner acknowledges that the approval of any application pursuant to this Article does not constitute an assurance or guarantee that the approved improvements are safe or fit for habitation. Neither the Association, the Board of Directors, ACC, nor any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

11.7. Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board Owners shall, at their own cost and expense, remove such structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board of Directors or its designees, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, which may include monetary fines imposed by the Board of Directors, or ACC together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines, in addition to the fees, costs, and fines provided in the preceding paragraph, may be excluded by the Board of Directors from the Properties. In such event, neither the Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Board of Directors, or ACC.

**ARTICLE XII**  
**USE RESTRICTIONS AND RULES**

12.1. Plan of Development: Applicability: Effect. All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the Bylaws, and the rules of the Association.

12.2. Authority to Promulgate Use Restrictions and Rules. The use restrictions applicable to all of the Properties as contained in this Article. Subject to the terms of this Article, such use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the current use restrictions set forth in this Article. The Board shall send notice to all Owners concerning any such proposed action at least ten (10) and no more than sixty (60) business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Owners representing at least 67% of the total Class "A" votes.

(b) Alternatively, the Owners, at a meeting duly called for such purpose as provided in the ByLaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Owners representing at least 67% of the total Class "A" votes.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

12.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of their Unit can be affected and that the Use Restrictions and Rules may change from time to time.

12.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or by amendment) neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside or outside of structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions on displays visible from the outdoors for the purpose of minimizing damage and disturbance to other Owners and occupants.

(c) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, such as utilizing the dwelling as a business, daycare, hospice center, and/or consignment shop, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that is a private and/or public nuisance as such terms are defined by a Texas court.

(e) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article X.

(f) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit, provided the Association or the Board may require a minimum lease term of up to twelve (12) months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association of its costs to administer that lease or transfer.

12.5. Minimum Floor Areas: Each Dwelling shall have a floor area, exclusive of porches (open or closed), patios, garages, carports, balconies or decks, with a minimum of 3,200 square feet of heated or cooled space.

12.6. Types of Structures: Unless otherwise approved by the ACC, no permanent improvements shall be erected, constructed, altered or permitted to remain on any Lot other than one (1) detached single family residential dwelling. Each dwelling shall have a private garage as provided in Section 12.7. No used or previously constructed building or other structure shall be moved onto any Lot at any time. No structure of any kind of a temporary character and no trailer, mobile home, manufactured home, trailer home, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

12.7. Garage Construction. All garages constructed on any Lot shall be side or rear entry and shall be approved, in writing by the ACC prior to the beginning of construction on the Dwelling. Garages may not be closed in and occupied or used as part of a Dwelling. Garages may not be used for other than storage and parking vehicles without the express written consent of the ACC which consent may be withheld for any reason.

12.8. Construction Materials and Exterior Color. All materials used in the construction of the exterior of any Dwelling or other structure must be approved in writing by the ACC before commencement of construction. Only new construction materials shall be used (except as approved in writing by the Architectural Control Committee on a case-by-case basis). The ACC shall have the right to impose limitations on the exterior color of any Permanent Improvement, including roof and trim color.

12.9. Setbacks: All Permanent Improvements shall be located on each Lot in compliance with the setback lines as shown on the Plat. For such purposes of this covenant, roof overhang, eaves and open porches shall be considered as a part of the Dwelling.

12.10. Retaining Walls, Fences, Hedges and Other Screening Material. No retaining wall, fence, planter, hedge, or other screening material may be erected or maintained on the Common Areas or on any Lot without the prior written consent of the ACC.

12.11. Drilling Activity. At no time shall the drilling usage or operation of any water Well or any well or excavation for oil, gas or other minerals be permitted on the Common Areas or on any Lot.

12.12. Air Conditioners and Heaters. No window or wall type air conditioner or heater shall be permitted to be used, erected, placed or maintained on or in any Dwelling or elsewhere on any Lot or the Common Areas. All air conditioning units shall be concealed from view from the streets.

12.13. Fences, Walls and Hedges. No barbed wire shall be allowed in the construction of any fence on the Property. Any fence, wall, hedge or other similar structure or Permanent Improvement must be included in a Construction Request with respect to location, height and type of material and must be approved in writing by the ACC. No fence higher than six feet (6') will be approved. Chain link fences are prohibited. Notwithstanding any other provisions of this Declaration to the contrary; a fence approved by the ACC shall be exempt from the rear and interior setback lines.

12.14. Utilities. Each Dwelling shall be required to be connected to the water distribution system

and sanitary sewer collection system in the Subdivision in the easements adjacent to or within the respective Lot upon which the Dwelling is located. Individual underground electrical service drops must be installed to each Dwelling. Each Owner shall comply with the requirements of the applicable utility company regarding such underground service installations, including without limitation the payment of any lawful charges which might be incurred for the installation of the underground service as set forth in applicable utility company rules, regulations and terms and conditions of service, as the same may be amended from time to time without notice. No gas, electric, power, telephone, water, sewer; cable television or other utility or service lines of any nature or kind shall be placed, allowed or maintained upon or above the ground on any Lot, except to the extent, if any, underground placement thereof may be prohibited by law or would prevent the subject line from being functional. The foregoing shall not prohibit service pedestals and above ground switch cabinets and transformers where required. Water pressure booster pumps may be required for some Lots, and installation shall be at the sole cost and expense of the Owner of the Lot Unless otherwise expressly approved by the ACC, electric meters shall be placed within 150 feet of the electric service hand hole on the front corner of each Lot.

12.15. Out Buildings. Any proposed out buildings or other Permanent Improvements must be approved in writing by the ACC.

12.16. Signs. No exterior signs or advertisements of any kind may be placed, allowed or maintained on any lot or easement without prior approval and authorization of the Board, except that residential name plates, real estate "For Sale" signs, and signs designating the contractor of the dwelling unit upon such lot may be placed and maintained in conformity with such common specifications. All mailboxes shall satisfy such specifications and location as may be prescribed by the design guideline as established by the Architectural Review Committee. An owners' may display one or more signs advertising a political candidate or ballot item for an election on or after the 90th day before the date of the election to which the sign relates; or before the 10th day after that election date. Any sign must be ground-mounted. Owners may have one (1) sign per candidate and one (1) sign for a ballot item. No signage under this section is allowed if it contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative component.

No signage under this section shall be attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object. Furthermore, such signage is prohibited if it:

- (a) includes the painting of architectural surfaces;
- (b) threatens the public health or safety;
- (c) is larger than two feet by three feet;
- (d) violates a law;
- (e) contains language, graphics, or any display that would be offensive to the ordinary person; or
- (f) is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists.

12.17. Re-subdivision. No Lot shall be further subdivided and no portion less than all of any Lot, or any easement or other interest therein, shall be conveyed by any Owner without the prior written authorization and approval of the ACC.

12.18. Septic Tanks and Sewage Disposal. No septic tank or other means of sewage disposal may be installed on any Lot unless previously approved in writing by all governmental authorities having jurisdiction with respect thereto and by the ACC. No outside toilets of any kind are permitted, except during the period of construction of a Dwelling during which time chemically treated outside toilets shall be maintained in a manner subject to approval of the ACC. No installation of any type of device for disposal of sewage shall be allowed which would result in raw or untreated or unsanitary sewage being carried into any body of water or water source or onto any Lot.

12.19. Erosion Control Plan. The Property is subject to Erosion Control Plan No. TXR10Q261 (the "Plan") approved by and on file with the Environmental Protection Agency ("EPA"). The Plan requires that a Notice of Intent to Develop be filed with the EPA prior to the commencement on construction on any Lot. Each Owner, by accepting a Deed to a Lot, agrees to comply with the Plan at all times. With respect to each Lot, the Owner shall be solely liable for failure to comply with the Plan and hereby agrees to hold the ACC, and the Association, including its agents, representatives, and Board of Directors, harmless from any losses or damages suffered as a result of Owner's failure to comply with the Plan.

12.20. Chimneys. All fireplace chimneys which are visible from any street shall be of masonry construction.

12.21. Railroad Ties and Timbers. No railroad ties or timbers may be used in any landscape feature which is visible from any street.

12.22. Driveways. As to any Lot, all driveways shall be entirely of concrete, or approved by the Architectural Control Committee and shall be paved before any Dwelling may be occupied. No driveway or other roadway may be constructed on any Lot in such a manner as to furnish access to any adjoining Lots or other property without the prior written consent of the ACC. All driveways shall be constructed in such a manner that all run-offs will not cause erosion problems to adjacent Lots. Erosion control will be the responsibility of each individual Owner during the construction and continuing on an ongoing basis after completion of construction.

12.23. Sidewalks. Sidewalks along the streets shall be required as shown on the Sidewalk Plan, as same may be amended from time to time by the Board. Where required, sidewalks shall be constructed and maintained at the Owner's expense in accordance with such specifications as may be prescribed from time to time by the ACC. Sidewalks which are not required by the Sidewalk Plan (including sidewalks from the street curb to the Dwelling) shall be constructed at such locations and under such specifications as may be approved or prescribed by the ACC.

12.24. Sprinkler System. Each Dwelling shall include a sprinkler system which shall be used on a regular basis for the maintenance of and perpetuation of the lawn, landscaping and other vegetation associated with the Lot.



12.25. On Street Parking. On street parking on the Subdivision Streets shall be and is hereby restricted to only reasonable and normal deliveries, pick-ups, or short-time guests and invitees, and all parking on the Streets shall be subject to such reasonable rules and regulations as shall be adopted from time to time by the ACC or the Board. At no time shall any Owner or any relative of any Owner, or anyone residing in a Dwelling, either permanently or temporarily, or any guest or invitee of any Owner, resident or occupant of any Lot, park or allow to be parked for any reason on the Streets (i) any motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, (ii) any van in excess of three-quarters (3/4) of a ton, or truck of any type in excess of three-quarters (3/4) of a ton, nor (iii) any vehicle with painted advertising or magnetic sign(s).

12.26. Off Street Parking. At no time shall any Owner, or any relative of any Owner, or anyone residing in a Dwelling, either permanently or temporarily, or any guest or invitee of any Owner, resident or Occupant of any Lot, park or allow to be parked for any reason on any Lot in the Subdivision any (i) boat, motor home, recreational vehicle, bus, tractor, trailer, or bob-tail truck, nor (ii) van in excess of three-quarters (3/4) of a ton, or truck of any type in excess of three-quarters (3/4) of a ton, unless parked completely inside the garage of a Dwelling such that the door on the garage can be completely closed and such that such boat, motor home, recreational vehicle, bus, tractor, trailer, bob-tail truck, van or other type of truck is completely concealed from being visible from all points outside the Dwelling.

12.27. Overnight Parking. Any and all vehicles to be parked overnight on any Lot shall be parked in the garage on the Lot to the extent that the garage is fully utilized (e.g. if a garage is a two car garage, there must be two motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage; if a garage is a three car garage, there must be three motor vehicles parked inside the garage before the Owner shall be allowed to park any vehicle outside the garage, etc.). If, and only if, the garage is fully utilized by parking vehicles inside the garage, then an Owner may allow a vehicle to be parked overnight on an Owner's Lot outside of the garage. The Board shall have the right to adopt parking rules or regulations that are more restrictive than the restrictions set forth in this Section 12.27 at the sole discretion of the Board, and in such event the more restrictive measure shall control in the event of any conflict between this provision and any rule or regulation adopted by the Board. Notwithstanding anything to the contrary contained in this Declaration, in no event shall any Owner be allowed to park any vehicle on any street in the Subdivision overnight.

12.28. Emergency or Temporary Maintenance Vehicles. The provisions of this Declaration shall not prevent any emergency vehicle repairs or the operation of any emergency vehicle (such as an ambulance or fire engine) within the Subdivision. The provisions of this Declaration shall not prevent the operation or temporary use of construction trailers, vans, or other trucks, machinery/equipment construction shelters or facilities maintained during and used exclusively in connection with the construction of any Permanent Improvement approved in writing by the ACC.

12.29. Garbage. No rubbish, garbage, or trash shall be placed or be allowed to remain at the exterior of any Dwelling or other structure on any Lot, except in containers meeting the specifications of the ACC. The placement, maintenance, and appearance of all such containers shall be subject to reasonable rules and regulations of the ACC. The placement of all such containers

shall be in areas attractively screened or concealed (subject to all required approvals as to architectural control) from view from neighboring Dwellings, pathways, and streets. Each Owner is responsible for regular removal of all rubbish, garbage, and trash from the Owner's Lot. Rubbish, garbage, and trash shall not be allowed to accumulate.

12.30. Animals. No animals, reptiles, fish or birds of any kind shall be raised, bred or kept on any Lot except pursuant to prior written approval of and in accordance with rules and regulations promulgated by the Board; provided, however, that dogs, cats, birds, or fish may be kept thereon as household pets so long as, in the sole discretion of the Board, such pet is not, or does not become, a nuisance, threat, or otherwise objectionable to other Owners. If, in the discretion of the Board, an Owner's pet or pets do become a nuisance or threat to any Owner or otherwise becomes objectionable to any Owner, the Board shall give notice to the Owner of the pet or pets of such nuisance, threat of objection, and the Owner shall thereafter not be allowed to keep such pet or pets on the Owner's Lot or anywhere else upon the Property. The Board may adopt Rules and Regulations concerning animals, which are more restrictive than the provisions of this Declaration, including rules that prohibit the ownership of certain pets, except that such rule shall not apply to animals residing in the Community Area at the time such rule is adopted.

12.31. Burning and Incinerators. No open fires shall be permitted on any Lot at any time, and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

12.32. Firearms and Weapons. No Lot or any other portion of the Property shall be used or permitted for hunting or for the discharge of any pistol, rifle, shotgun, or any other firearm, or any bow and arrow or any other device capable of killing or injuring.

12.33. Diseases and Insects. No Owner shall permit anything, or condition to exist upon any Lot which shall, in the sole opinion of the Board, induce, breed or harbor plant disease or noxious insects.

12.34. Machinery, Fixtures and Equipment. No exterior machinery, fixtures or equipment of any type, including without limitation, playground equipment and clothes lines, shall be placed, allowed or maintained upon any Lot except with prior written approval of ACC.

12.35. Motor Vehicles. The operation of any and all motorized vehicles within or upon the Property or any part thereof shall be subject to such rules and regulations as shall from time to time be established by the Board.

12.36. Misuse and Mismanagement. No Lot and no part of the Common Areas shall be maintained or utilized in such manner as to (i) present an unsightly appearance, (ii) unreasonably offend the sensitivity of a reasonable person, or (iii) constitute a nuisance or unreasonable annoyance to, or as to endanger the health of, any Owners or residents of the Subdivision, as determined in the sole opinion of the ACC or the Board.

12.37. Violation of Statutes, Ordinances, and Regulations. No Lot nor the Common Areas shall be maintained or utilized in such manner as to violate any applicable statute, ordinance or regulation of the United States of America, the State of Texas, the County of Smith, the City of Tyler, or any other governmental, or quasi-governmental agency, or authority having jurisdiction over the Property.

12.38. Violation of Rules or of Covenants. No Lot shall be maintained or utilized in violation of (i) this Declaration, or (ii) the rules and regulations of the ACC, the Board or the Association, or (iii) any of the Covenants.

12.39. Garage and Estate Sales. The conduct of garage, yard and estate sales within the Subdivision shall be subject to such prohibitions, limitations and restrictions as may be adopted from time to time by the Board.

12.40. Gates. The Board may adopt and amend from time to time, rules and regulations governing use and operation of the gates to the Subdivision.

12.41. Antennas. No exterior television, radio or other antennae of any type shall be placed, allowed or maintained upon any lot without the prior written approval and authorization of the ACC.

12.42. Storage. No storage building of any kind shall be permitted, except with prior written approval and authorization of the ACC. Any outdoor storage as may be approved and authorized shall be in areas attractively screened or concealed (subject to all required approvals by the ACC) from view from neighboring properties, Dwellings and streets. This provision shall apply, without limitation, to wood piles, camping trailers, boat trailers, travel trailers, boats, mobile homes and unmounted pickup camper units.

12.43. Outside Lighting. No outside lighting other than direct lighting shall be placed, allowed or maintained on any Lot without the prior written approval and authorization of the ACC.

### **ARTICLE XIII** **EASEMENTS**

13.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon, in accordance with the terms of these restrictions, to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2. Easements for Utilities, Etc. There are hereby reserved unto the Association, and the designees of such, which may include, without limitation, Smith County, Texas and any utility, access, and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar monitoring systems, roads, walkways, bicycle pathways, trails, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded agreed plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.3. Easements to Serve Additional Property. The Association hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any property annexed pursuant to Article IX, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

13.4. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency and safety reasons, to perform maintenance pursuant to Article V hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

## **ARTICLE XIV** **MORTGAGEE PROVISIONS**

14.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association, such request to state the name and address of

such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder", will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

14.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

14.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XV DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

15.1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article, collectively, "Bound Parties", agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances, or disputes between such Bound Party and any other Bound Party involving, arising out of or relating to (a) the use, sale, purchase, construction, improvement, maintenance, operation or marketing of the Properties, (b) the interpretation, application or enforcement of this Declaration, the Bylaws, the Association rules, or the Articles, (c) the

administration, operation, management, use or maintenance of the Association and its assets, or (d) the alleged negligent design, maintenance, development, improvement, construction or operation by Association of any portion of the Properties (collectively, "Claims"), except for those Exempt Claims described in Section 15.2, shall be resolved using the procedures set forth in Section 15.3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

15.2. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 15.3:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article X (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order, or equivalent emergency equitable relief, and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions);

(c) Any suit in which all indispensable parties are not Bound Parties;

(d) Any suit which all the parties thereto agree to consider as an Exempt Claim;

(e) A construction defects claim which involves damages in excess of \$50,000.00 per Unit; and

(f) The submission to a court of any settlement as a settlement affecting a class if such a class settlement is reasonably necessary to resolve a dispute which would otherwise not be an Exempt Claim.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 15.3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 15.3 shall require the approval of the Association.

15.3. Mandatory Procedures For All Other Claims. All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved, and Respondent's role in-the Claim;

2. The basis of the Claim (i.e., the laws, regulations, contract, provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

3. What Claimant wants Respondent to do or not do to resolve the Claim; and

4. That Claimant will meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice, or within such other period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent dispute resolution center, or such other independent agency providing similar services upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within fifteen (15) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be

deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within thirty (30) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings. Each Party shall bear its own costs incurred prior to and during the course of the arbitration.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Texas. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Texas.

15.4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 15.3(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 15.3(c).

(b) Each Party shall bear its own costs, including the fees of its attorney or other representative, incurred after the Termination of Mediation under Section 15.3(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs") except as otherwise provided in subsection 15.4(c).

(c) Claimant shall prepay to the arbitration panel the sum of \$1,000.00 to be applied toward payment of any Post-Mediation Costs of the Parties, and, in addition, shall advance all arbitration costs until an Award is made. If a Respondent brings a Claim (i.e., a counterclaim) against a Claimant, the arbitration panel may, upon request, order such Respondent to advance a portion of the arbitration costs. If an Award is equal to or more favorable to a Claimant than such Claimant's Settlement Demand, the arbitration panel may, in its discretion, add all or a portion of such Claimant's Post-Mediation Costs to the Award, and allocate such Costs to the Respondents in such proportions as the arbitration panel deems appropriate. If an Award against a Respondent is equal to or less favorable to Claimant than such Respondent's Settlement Offer to that Claimant, the arbitration panel may, in its discretion, also award to such Respondent its Post-Mediation Costs, and allocate such Post-Mediation Costs to the Claimants in such proportions as the arbitration panel deems appropriate.



15.5. Enforcement of Resolution. After resolution of any Claim through negotiation, mediation or arbitration, in accordance with Section 15.3, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 15.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party, or if more than one non-complying Party, from all such Parties pro rata, all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

#### 16.1. Duration.

(a) Unless terminated as provided in Section 16.1(b), this Declaration shall have perpetual duration. If Texas law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Texas law, in which case such law shall control, this Declaration may not be terminated within twenty (20) years of the date of recording without the consent of all Unit Owners and unanimous approval of the Board of Directors. Thereafter, it may be terminated only by an instrument signed by Owners of at least 67% of the total Units within the Properties and by the Board of Directors, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

#### 16.2. Amendment.

(a) Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the votes in attendance at a properly noticed meeting called for the purpose of amendment.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Effective Date and Validity. To be effective, any amendment must be recorded in the Public Records.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

16.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Litigation. No judicial, arbitration or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of the Board of Directors. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.5. Intentionally Deleted.

16.6. Use of the Words "Graemont Estates". No Person shall use the words "Graemont Estates" or any derivative in any printed or promotional material without the Association's prior written consent. However, Owners or Builders may use the terms "Graemont Estates" in printed or promotional matter where such term is used solely to specify that particular property is located within Graemont Estates. The Association also shall be entitled to use the words "Graemont Estates" in its name. Any use of the registered name "Graemont Estates" shall be in a manner in which the proprietary rights to such name are protected.

16.7. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the Bylaws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by any aggrieved Unit Owner(s).

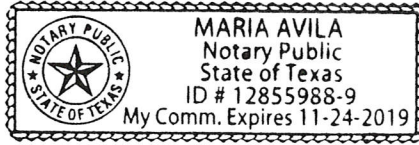
16.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to their Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.9. Prohibition Against Discrimination. Discrimination by race, color, religion, age, sex or national origin in the administration, interpretation, application, and enforcement of this the Bylaws, the Association rules or the Articles shall be prohibited.

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association has executed this Declaration this 11<sup>th</sup> day of May 2016.

5/11/16  
Date  
[Signature]  
President

STATE OF TEXAS §  
COUNTY OF SMITH §



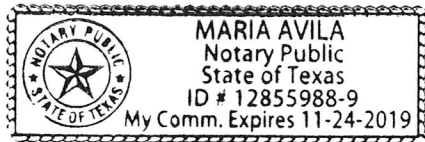
BEFORE ME, the undersigned authority, on the 11<sup>th</sup> day of May, 2016, personally appeared, Bryan Neal, to me known to be the President of Graemont Estates Homeowners Association, Inc. and he/she acknowledged before me the he/she executed the same for the purposes therein expressed.

[Signature]  
Notary Public, State of Texas  
My Commission Expires: 11-24-2019

5/11/16  
Date  
[Signature]  
Secretary

STATE OF TEXAS §  
COUNTY OF SMITH §

BEFORE ME, the undersigned authority, on the 11<sup>th</sup> day of May, 2016, personally appeared, Richard L. Degrauwe, to me known to be the Secretary of Graemont Estates Homeowners Association, Inc. and he/she acknowledged before me the he/she executed the same for the purposes therein expressed.



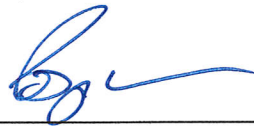
[Signature]  
Notary Public, State of Texas  
My Commission Expires: 11-24-2019

**Graemont Estates Homeowners Association**  
**Summary Minutes of the Annual Membership Meeting**  
**May 10<sup>th</sup>, 2016**

1. Meeting held at Comfort Suites located at 303 East Rieck Road Tyler, TX at 7:00 pm. Notice of meeting was mailed to all lot owners on April 19th, 2016 after no quorum was met at previous attempts on March 8<sup>th</sup> and April 5<sup>th</sup>.
2. 23 lot owners were in attendance and 41 more lot owners were represented by proxies.
3. The meeting was called to order at 7:00 pm.
4. Bryan Neal, President called for a quorum and Virginia D Clark, CPA reported that we had met the 50% quorum requirement for an annual membership meeting (64 out of 79, or 81%).
5. Minutes from 2015 annual meeting held on April 7<sup>th</sup>, 2015 were approved by the Board.
6. Minutes from the April 12<sup>th</sup>, 2016 Board meeting were approved by the Board.
7. Bryan then gave an update on HOA 2015/YTD 2016 accomplishments and remaining 2016 areas of focus.
8. Committee Reports – Finance, Grounds & Architectural Control Committee
9. Old Business – Gate Operations update
10. New Business
  - a. Vote on First Amended By-Laws and First Amended Declarations of Covenants, Conditions and Restrictions
    - i. On the 39 proxies received authorizing the Board to vote on their behalf, the Board voted for approval of the First Amended By-Laws and First Amended Declarations of Covenants, Conditions and Restrictions.
    - ii. In addition to the 23 lot owners present, one lot owner was selected to vote on behalf of 2 lot owners per their proxies.
    - iii. The votes were tabulated and certified by Virginia D Clark, CPA that all 64 votes (proxies and ballots) unanimously voted to adopt the First Amended By-Laws and First Amended Declarations of Covenants, Conditions and Restrictions as they were presented in the mailing that occurred on April 19<sup>th</sup>, 2016 and formally presented by the Board at this Annual Meeting. This exceeds the minimum threshold of 67% of the 79 lots (53 yes votes) required per Texas HOA law to amend a declaration.
11. Nomination and voting for 2016 Board of Directors
12. Open forum
13. Motion to adjourn was made by Rick, seconded by Fred and meeting was adjourned at 9:00 pm.

  
\_\_\_\_\_  
Rick DeGrauwe, Secretary/Treasurer

Date: 5/12/16

  
\_\_\_\_\_  
Bryan Neal, President

Date: 5/12/16

# EXHIBIT "A1"

I, JOHN B. ALSTON, Registered Professional Land Surveyor in the State of Texas, do hereby certify that I am the author of the survey shown on this plat and that I am a duly licensed and active member of the Surveyors' Association of the State of Texas, Inc. My commission expires on the 31st day of April, 2005.



SUBSCRIBED AND SWORN to before me, a Notary Public, in and for the State of Texas, this 15th day of April, 2002.

NOTARY PUBLIC \_\_\_\_\_

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the UTILITY BUILDING, Ltd., do hereby certify that the survey shown on this plat is a true and correct copy of the original survey made by me and that I am the author of the same and that I am a duly licensed and active member of the Surveyors' Association of the State of Texas, Inc. My commission expires on the 31st day of April, 2005.

Witness my hand this 15th day of April, 2002.

BY: \_\_\_\_\_  
Utility Building, Ltd.  
Supt. Manager

SUBSCRIBED AND SWORN to before me, a Notary Public, in and for the State of Texas, this 15th day of April, 2002.

NOTARY PUBLIC \_\_\_\_\_

APPROVED BY WILLIAM H. HORTON, DIRECTOR OF PLANNING ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2002.

BY: \_\_\_\_\_

ATTENTION \_\_\_\_\_

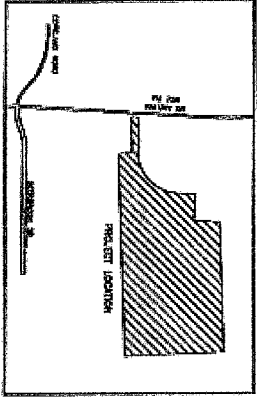
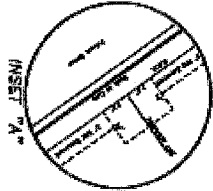
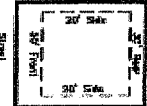
APPROVED BY \_\_\_\_\_

NOTARY PUBLIC \_\_\_\_\_

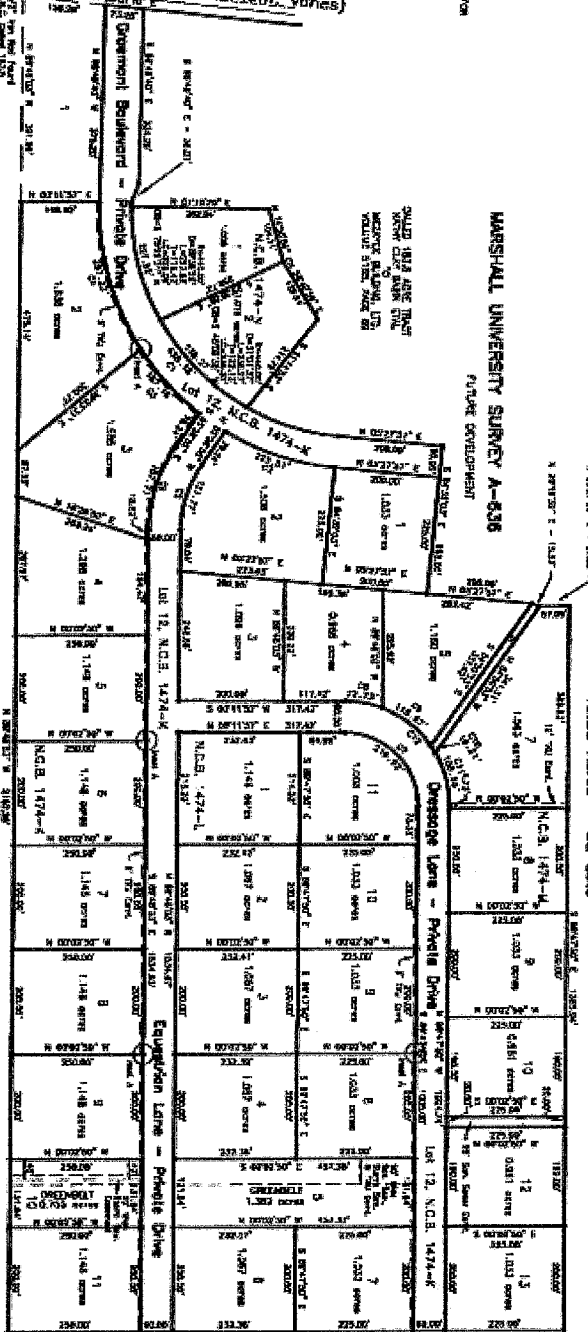
RECORDED IN COUNTY \_\_\_\_\_ STATE \_\_\_\_\_ OF THE YEAR \_\_\_\_\_

OF PART COUNTY, TEXAS DATE \_\_\_\_\_

Building Setbacks



LOT NO.	AREA (SQ. FT.)	AREA (ACRES)	OWNER
1	1,000	.0228	UTILITY BUILDING, LTD.
2	1,000	.0228	UTILITY BUILDING, LTD.
3	1,000	.0228	UTILITY BUILDING, LTD.
4	1,000	.0228	UTILITY BUILDING, LTD.
5	1,000	.0228	UTILITY BUILDING, LTD.
6	1,000	.0228	UTILITY BUILDING, LTD.
7	1,000	.0228	UTILITY BUILDING, LTD.
8	1,000	.0228	UTILITY BUILDING, LTD.
9	1,000	.0228	UTILITY BUILDING, LTD.
10	1,000	.0228	UTILITY BUILDING, LTD.
11	1,000	.0228	UTILITY BUILDING, LTD.
12	1,000	.0228	UTILITY BUILDING, LTD.
13	1,000	.0228	UTILITY BUILDING, LTD.
14	1,000	.0228	UTILITY BUILDING, LTD.
15	1,000	.0228	UTILITY BUILDING, LTD.
16	1,000	.0228	UTILITY BUILDING, LTD.
17	1,000	.0228	UTILITY BUILDING, LTD.
18	1,000	.0228	UTILITY BUILDING, LTD.
19	1,000	.0228	UTILITY BUILDING, LTD.
20	1,000	.0228	UTILITY BUILDING, LTD.



NO.	DATE	REVISIONS

\* Replat showing  
 Graemont Addition Unit 1  
 M. University Survey A-636  
 Tyler, Smith County, Texas

**K & K**  
 Kilgore & Company, Inc.  
 WWW.KILGOREANDCOMPANY.COM

6712 Phay Drive  
 Tyler, Texas 75703  
 (903) 581-7800  
 FAX (903) 581-5756

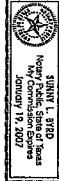


DESIGNED BY: \_\_\_\_\_  
 DRAWN BY: K.L.K.  
 CHECKED BY: K.L.K.  
 DATE: 4-15-2002  
 SCALE: 1"=100'

# EXHIBIT "A2"



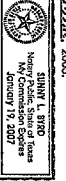
KEVIN L. KILGORE, REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 4487, DO HEREBY CERTIFY THAT THE PLAN SHOWN HEREON WAS PREPARED AND DRAWN BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION ON THE GROUND DURING THE MONTH OF MAY, 2005.  
OVER UNDER MY HAND AND SEAL THIS 24th DAY OF MAY, 2005.  
KEVIN L. KILGORE, R.P.L.S. NO. 4487



NOW, THEREFORE, KNOWN ALL MEN BY THESE PRESENTS:  
That Wm. MEZAYER BUILDING, Ltd., do hereby certify that the plat depicting the subdivision of the City of Tyler, Texas, and does hereby dedicate the easements shown hereon.  
In witness whereof, the undersigned hereby certifies that the use of public utilities dealing to use or using same unless the consent has been obtained from the appropriate authorities of the City of Tyler and public utility entities shall be of all times have the full right of ingress and egress to or from their respective easements.  
This plat approved subject to all zoning ordinances, rules, regulations and resolutions of the City of Tyler, Texas.  
WITNESS my hand this 24th day of May, 2005.

SUBSCRIBED AND SWORN TO BEFORE ME, A NOTARY PUBLIC, IN AND FOR THE STATE OF TEXAS, THIS 24th day of May, 2005.  
NOTARY PUBLIC  
Sherry L. Boyd  
Mezayer Building, Ltd.  
Sam Mezayer

APPROVED BY THE CITY PLANNING & ZONING COMMISSION OF TYLER, TEXAS ON THIS 5 DAY OF MAY, 2005.  
Re: Easements  
CERTIFICATE



ATTEST:  
DEBRA S. JAMES 2005  
RECEIVED

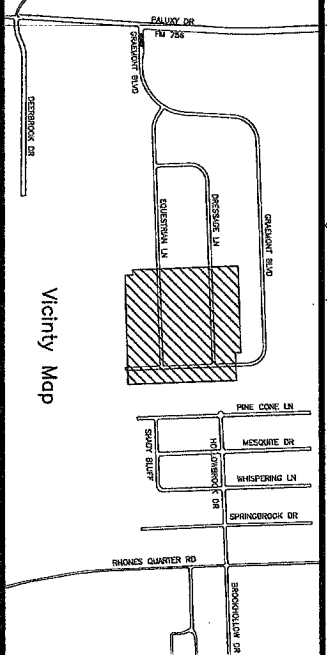
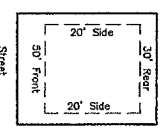
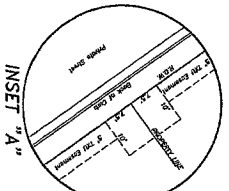
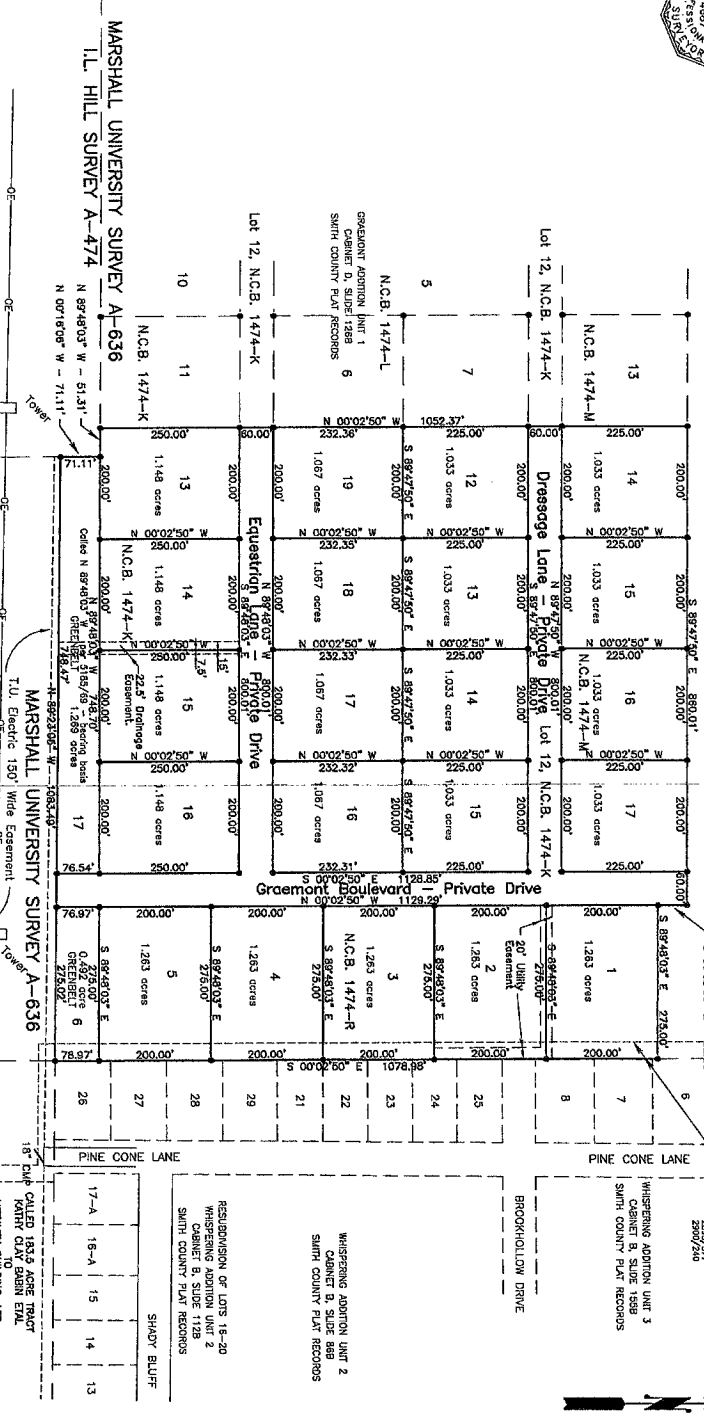
NOTES:  
THE DEUTY COMPANY ENTER, INC., SOUTHWESTERN BELL TELEPHONE SERVICE CO., SOUTHWESTERN POWER AND LIGHT CO., AND THE CITY OF TYLER ARE HEREBY GRANTED EASEMENTS TO INSTALL THEIR UTILITIES WITHIN THE FEET OUTSIDE OF RIGHT-OF-WAY ADJACENT TO THE LOTS.  
• Easements 1/2" from Road to be set.

PLAT BEING A PART OF THIS PLAT BEING PART OF THE CITY OF TYLER, TEXAS AND IS SUBJECT TO PLANS AND WITHHOLDING OF UTILITIES RECORDED IN CABINET \_\_\_\_\_ SLIDE \_\_\_\_\_ OF THE PLAT RECORDS OF SMITH COUNTY, TEXAS. DATE \_\_\_\_\_

MARSHALL UNIVERSITY SURVEY A-636

2005-R0034251

CALLED 1835 ACRES TRACT KATHY CLAY DONN EATL MEZAYER BUILDING, LTD. VOLUME 5189, PAGE 69



Find Plat Showing  
Graemont Addition Unit 2  
21 Lots - 28.96 Acres  
Tyler, Smith County, Texas

**Kilgore**  
Company, Inc.  
www.kilgore.com

6712 Ralston Drive  
Tyler, Texas 75703  
(903) 981-7800  
Fax (903) 981-3756  
987-DE 146 KID



DESIGNED BY:  
DRAWN BY: K.L.K.  
CHECKED BY: K.L.K.  
DATE: 5-23-2005  
SCALE: 1"=150'

NO. 19741, 19742, 19743, 19744, 19745, 19746, 19747, 19748, 19749, 19750, 19751, 19752, 19753, 19754, 19755, 19756, 19757, 19758, 19759, 19760, 19761, 19762, 19763, 19764, 19765, 19766, 19767, 19768, 19769, 19770, 19771, 19772, 19773, 19774, 19775, 19776, 19777, 19778, 19779, 19780, 19781, 19782, 19783, 19784, 19785, 19786, 19787, 19788, 19789, 19790, 19791, 19792, 19793, 19794, 19795, 19796, 19797, 19798, 19799, 19800, 19801, 19802, 19803, 19804, 19805, 19806, 19807, 19808, 19809, 19810, 19811, 19812, 19813, 19814, 19815, 19816, 19817, 19818, 19819, 19820, 19821, 19822, 19823, 19824, 19825, 19826, 19827, 19828, 19829, 19830, 19831, 19832, 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840, 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848, 19849, 19850, 19851, 19852, 19853, 19854, 19855, 19856, 19857, 19858, 19859, 19860, 19861, 19862, 19863, 19864, 19865, 19866, 19867, 19868, 19869, 19870, 19871, 19872, 19873, 19874, 19875, 19876, 19877, 19878, 19879, 19880, 19881, 19882, 19883, 19884, 19885, 19886, 19887, 19888, 19889, 19890, 19891, 19892, 19893, 19894, 19895, 19896, 19897, 19898, 19899, 19900, 19901, 19902, 19903, 19904, 19905, 19906, 19907, 19908, 19909, 19910, 19911, 19912, 19913, 19914, 19915, 19916, 19917, 19918, 19919, 19920, 19921, 19922, 19923, 19924, 19925, 19926, 19927, 19928, 19929, 19930, 19931, 19932, 19933, 19934, 19935, 19936, 19937, 19938, 19939, 19940, 19941, 19942, 19943, 19944, 19945, 19946, 19947, 19948, 19949, 19950, 19951, 19952, 19953, 19954, 19955, 19956, 19957, 19958, 19959, 19960, 19961, 19962, 19963, 19964, 19965, 19966, 19967, 19968, 19969, 19970, 19971, 19972, 19973, 19974, 19975, 19976, 19977, 19978, 19979, 19980, 19981, 19982, 19983, 19984, 19985, 19986, 19987, 19988, 19989, 19990, 19991, 19992, 19993, 19994, 19995, 19996, 19997, 19998, 19999, 20000.

APPROVED BY THE CITY PLANNING AND ZONING COMMISSION OF TARRANT COUNTY, TEXAS

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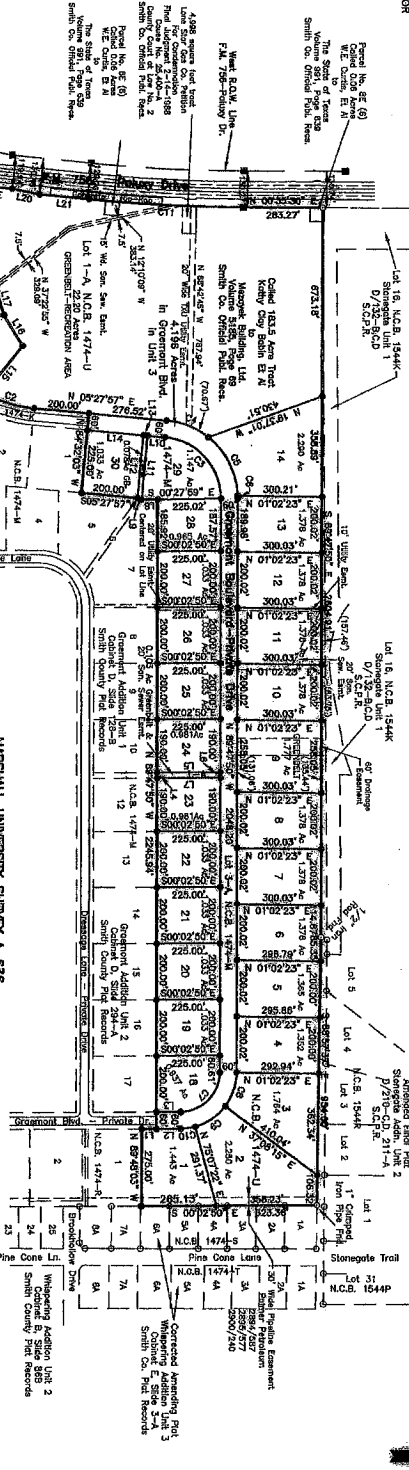
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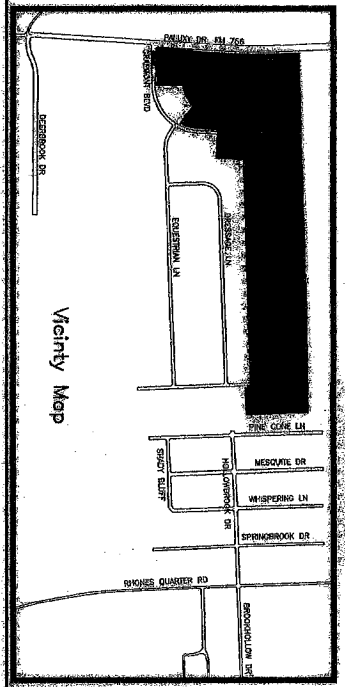
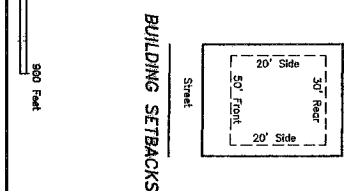
APPROVED BY THE CITY PLANNING AND ZONING COMMISSION OF TARRANT COUNTY, TEXAS



CURVE	RADIUS	DELTA	TANGENT	BEARING	CHORD
C1	440.00	0.0000	7.50	N 89.1633° E	7.50
C2	440.00	0.0000	7.50	N 89.1633° E	7.50
C3	200.00	0.0000	3.75	N 89.1633° E	3.75
C4	200.00	0.0000	3.75	N 89.1633° E	3.75
C5	200.00	0.0000	3.75	N 89.1633° E	3.75
C6	200.00	0.0000	3.75	N 89.1633° E	3.75
C7	140.00	0.0000	2.625	N 89.1633° E	2.625
C8	140.00	0.0000	2.625	N 89.1633° E	2.625
C9	140.00	0.0000	2.625	N 89.1633° E	2.625
C10	200.00	0.0000	3.75	N 89.1633° E	3.75
C11	578.65	0.0000	10.31	N 89.1633° E	10.31

LINE	DISTANCE	BEARING
L1	67.25	N 89.1633° E
L2	67.25	N 89.1633° E
L3	67.25	N 89.1633° E
L4	67.25	N 89.1633° E
L5	67.25	N 89.1633° E
L6	67.25	N 89.1633° E
L7	67.25	N 89.1633° E
L8	67.25	N 89.1633° E
L9	67.25	N 89.1633° E
L10	67.25	N 89.1633° E
L11	67.25	N 89.1633° E
L12	67.25	N 89.1633° E
L13	67.25	N 89.1633° E
L14	67.25	N 89.1633° E
L15	67.25	N 89.1633° E
L16	67.25	N 89.1633° E
L17	67.25	N 89.1633° E
L18	67.25	N 89.1633° E
L19	67.25	N 89.1633° E
L20	67.25	N 89.1633° E
L21	67.25	N 89.1633° E
L22	67.25	N 89.1633° E
L23	67.25	N 89.1633° E
L24	67.25	N 89.1633° E
L25	67.25	N 89.1633° E
L26	67.25	N 89.1633° E
L27	67.25	N 89.1633° E
L28	67.25	N 89.1633° E
L29	67.25	N 89.1633° E
L30	67.25	N 89.1633° E

NOTES:  
 BEARING BASIS IS THE SOUTH BOUNDARY LINE OF GROUNDED ADDITION UNIT 1 OF THE PLAT RECORDED IN COUNTY CLERK'S OFFICE BOOK 128-9 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS.  
 TRULY BELIEVED COMPANY, INC., SOUTHWESTERN BELL CITY OF TARRANT COUNTY, TEXAS, HAS BEEN GRANTED RIGHTS TO INSTALL THESE UTILITIES WITHIN THE PRIVATE STREET RIGHTS-OF-WAY AND FEET OUTSIDE OF RIGHTS-OF-WAY ADJACENT TO THE LOT.



Final Plat  
 showing  
 Greamount Addition Unit 3  
 28 Lots - 61.735 Acres  
 Tyler, Smith County, Texas



6712 Bullock Drive  
 Tyler, Texas 75703  
 (903) 581-7800  
 Fax: (903) 581-3756



DESIGNED BY: R.H.  
 DRAWN BY: R.H.  
 CHECKED BY: K.L.K.  
 DATE: 3-12-2007  
 SCALE: 1"=300'

NO.	DATE	REVISIONS
1		
1		

CONTRACT NO. 99980  
 SHEET NO. 1

RECORDED IN COUNTY CLERK'S OFFICE BOOK 128-9 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS. DATE \_\_\_\_\_

# Smith County



---

**DO NOT REMOVE**

**THIS PAGE IS PART OF THE INSTRUMENT**

---

Filed for Record in  
Smith County, Texas  
5/16/2016 9:05:17 AM  
Fee: \$178.00  
20160100020134

RESTRICTION

Deputy - Brenda Calhoun

I hereby certify that this  
instrument was filed and duly  
recorded in the Official Public  
Records of Smith County, Texas

  
Karen Phillips  
County Clerk

