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**DECLARATION OF  
COVENANTS AND RESTRICTIONS**

**869183**

**FOR**

Deed

01/18/00

1951684

\$81.00

**THE ENCLAVE AT ASH CREEK**

THIS DECLARATION (the "Declaration"), is made this 5<sup>th</sup> day of JANUARY, 2000 by The Enclave at Ashcreek, L.P. ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property situated in the City of Dallas, Dallas County, Texas, as more particularly described on Exhibit "A", attached hereto and made a part hereof such real property, together with additions thereto as may be made subject to the terms of this Declaration by any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Deed Records of Dallas, County, Texas, being collectively called the "Property"; and desires to create on the Property a residential community with residential lots, open spaces and other common facilities for the benefit of the Owners, as hereinafter defined.

B. Declarant desires to provide for the efficient preservation of the values and amenities within the Property and for the maintenance of open spaces and other common facilities. To this end, Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration and to create a non-profit corporation to which would be delegated and assigned the powers of maintaining and administering the community Property and facilities in accordance with the terms of this Declaration.

C. Declarant has caused or will cause to be incorporated under the Non-Profit Corporation Act of the State of Texas (the "Act") a non-profit corporation known as, The Enclave at Ashcreek Homeowners Association, Inc. (the "Association").

**NOW, THEREFORE**, Declarant, for and in consideration of, and expressly for the benefit of, and to bind, its successors in interest, does hereby agree and declare that the Property, including any additions thereto as may hereafter be made hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens sometimes referred to collectively as the (the "Covenants") hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property or any part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, charges and liens hereinafter set forth are covenants running with the Property at law as well as in equity.

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## ARTICLE I

### DEFINITIONS

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

**"Architectural Committee"** shall mean the New Construction Committee or the Modifications Committee which is applicable as described in Article IX of this Declaration.

**"Assessments"** shall mean and refer to the regular annual assessments, the special assessments and the default assessments levied for the Association as determined by the Board of Directors.

**"Association"** shall mean and refer to The Enclave at Ashcreek Homeowners Association, Inc., a Texas non-profit corporation, its successors and assigns.

**"Board of Directors or Board"** shall mean the governing body of the Association, the elections and procedures of which shall be as set forth in the Articles of Incorporation and the Bylaws of the Association.

**"Builder"** shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

**"City"** shall mean the City of Dallas, Texas or its assignees.

**"Common Property"** shall mean and refer to all property, real or personal, owned or held by the Association for the common use and enjoyment of the members of the Association and designated as common property on the plat attached as "Exhibit A".

**"Declarant"** shall mean and refer to The Enclave at Ashcreek, L.P. and its successors and assigns, if: (a) such successor or assignee should acquire more than one (1) undeveloped Lot from Enclave at Ashcreek, L.P. for the purpose of development; and (b) any such successor or assignee shall receive by assignment from Enclave at Ashcreek, L.P. of all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights as Declarant to such successor or assignee.

**"Dwelling Unit"** shall mean and refer to any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

**"Institutional Mortgage"** shall mean a mortgage or deed of trust creating a first lien on a Lot which is held by a third party institutional lender.

**"Lot" or "Lots"** shall mean, with respect to any Property for which a subdivision map has been recorded in the map or plat records of Dallas County, Texas, each lot shown on such recorded subdivision map which is or is to be improved with a residential dwelling

and as shown on the plat which is attached as "Exhibit A".

**"MC"** shall refer to the Modifications Committee as described in Article IX of the Declaration.

**"Member"** shall mean and refer to each Owner as provided herein in Article II of this Declaration.

**"NCC"** shall mean and refer to the New Construction Committee as described in Article IX of this Declaration.

**"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, but, notwithstanding any applicable theory of mortgages or other security devices, shall not mean or refer to any mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any conveyance in lieu of foreclosure. Declarant shall be deemed an Owner of each Unplatted Lot.

**"Property"** shall have the meaning given to it in Paragraph A of the Introductory Statement above.

**"Resident"** shall mean and refer to each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

**"Two-Thirds Member Vote By Class"** shall mean the approval of two-thirds (2/3) of each class of Members entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

**"Two-Thirds Member Vote"** shall mean the approval of two-thirds (2/3) of all Members (regardless of class) entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; ADDITIONS TO THE PROPERTY

**2.1 Membership.** Each and every Owner shall automatically be and must remain a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation and the Bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot shall be the sole qualification for being a Member; provided, however, a Member's privileges in the Common Property may be regulated or suspended as provided in this Declaration, the Bylaws of the Association and/or the Association's rules and regulations. Any person or

entity that holds an interest in and to a Lot merely as security for the performance of an obligation shall not be a Member until such time as the holder or its successor acquires title to the Lot through foreclosure or conveyance in lieu thereof.

**2.2 Transfer.** Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of a Lot. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect. Owners shall notify the Association of any transfer of the fee title to a Lot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. In the event an Owner should fail or refuse to provide written evidence of transfer of the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in a Lot, the Association shall have the right to record the transfer upon the books and records of the Association.

**2.3 Classes of Membership.** The Association shall have two classes of voting membership:

**CLASS A.** Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

**CLASS B.** The Class B Member(s) shall be the Declarant. The Class B Member(s) shall be entitled to six (6) votes for each Lot owned by the Class B Member(s). However, at such times as the total number of Lots owned by the Class B Member(s) equals or exceeds six (6) times the total number of Lots owned by the Class A Members, the Class B Member(s) shall, during the time such equality or excess continues, be entitled to only one (1) vote for every Lot owned by it. Unless Additional Property is subjected to the terms of this Declaration in accordance with the provisions of Section 2.4, from and after January 1, 2006 (as subsequently amended, the "Voting Conversion Date"), the Class B Member(s) shall only be entitled to one (1) vote for each Lot owned by it regardless of the number of Lots owned by the Class B Member(s) at such time. In the event Additional Property are subjected to this Declaration in accordance with Section 2.4, then the Supplemental Declaration, as hereinafter defined, annexing such Additional Property shall designate a new Voting Conversion Date.

**2.4 Additions to the Property.** Additional tracts of land, together with the improvements situated thereon, may become subject to this Declaration and added to the Property in any of the following manners.

(a) Declarant may, without the consent of any Owner and at its sole option, at any time and from time to time within ten (10) years from the date of

recordation of this Declaration, add to the Property and to the concept of this Declaration, all or any portion of any other real property (the "Additional Property"), by filing of record, one or more Supplemental Declarations of Covenants, Conditions and Restrictions, which shall extend the coverage and/or concept of the covenants, conditions and restrictions of this Declaration to such property. Any such Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with the concept of this Declaration. In no event, however, shall such Supplemental Declaration modify or add to the covenants established by this Declaration for the Property existing prior to the filing of any such Supplemental Declaration unless such modifications and additions are approved by a Two-Thirds Member Vote. Declarant may make any such addition even though at the time such addition is made Declarant is not the Owner of any portion of the Property. Each Supplemental Declaration shall designate the number of separate plots or tracts comprising the Additional Property which are to constitute lots, and each such separate plot or tract shall constitute a "Lot" within the meaning of this Declaration. All or any part of the Additional Property and improvements located thereon owned by Declarant or any interest held by Declarant in the Property may be conveyed, transferred or assigned to the Association and designated as Common Property by the Declarant at its sole discretion and without the approval, assent or vote of the Association or of its Members; provided that any property so conveyed shall be free and clear of any and all mechanics' and materialmen's liens and that all taxes and governmental assessments against any such property which are then due and payable shall have been paid prior to the date of such conveyance. Notwithstanding any other provision hereof, nothing contained herein shall be deemed to require Declarant to add any Additional Property to the Property. Moreover, Declarant reserves the right to subject any Additional Property or any part thereof to the plan or one or more separate declarations of covenants, conditions and restrictions which subjects the real property to the functions, powers and jurisdiction of an association or other entity with powers and obligations similar to the Association and which may or may not be subject to the provisions of this Declaration.

(b) The annexations of Additional Property authorized by this Declaration shall be accomplished by executing and filing of record in the office of the County Clerk of Dallas County, Texas, a Supplemental Declaration or similar instrument, with respect to any Additional Property which shall extend the plan of this Declaration to such real property. Any such Supplemental Declaration contemplated above may contain such additions, deletions and/or modifications of the covenants, conditions, restrictions, easements, liens and charges contained in this Declaration as may be necessary to reflect the different character, if any, of such Additional Property and as are not substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration, or any merger or consolidation revoke, modify or add to the covenants, conditions, restrictions, easements, liens or charges established by this Declaration, as same relate to and affect that portion of the Property previously subject to this Declaration. Further, the method of determining Assessments for the Additional Property shall



not result in an Assessment substantially less than that affecting the Property unless such Additional Property and the Owners thereof do not enjoy substantially all of the benefits enjoyed by Owners of other Property previously subject to this Declaration. Any annexation, merger or consolidation made pursuant to this Declaration, when made, shall automatically extend the functions, powers and jurisdiction of the Association to the real property so added. Upon the filing of any Supplemental Declaration, each Owner of a Lot within the portion of the Additional Property added to the Property (other than Declarant) shall become a Class A Member, as herein defined, and shall become liable for assessments as provided for herein. Declarant shall continue to be the Class B Member with the number of votes per Lot (including any new Lots added pursuant to a Supplemental Declaration) as provided for in this Article II.

(c) Upon approval by a Two-Thirds Member Vote, the owner of any property who desires to add it to the concept of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplemental Declaration of Covenants, Conditions and Restrictions as described in paragraph (a) of this Article. Any additions made pursuant to paragraphs (a), (b) or (c) of this Section 2.3, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Association to the Property added. Upon acceptance in writing by the Association following approval by a Two-Thirds Class Member Vote, any person may convey, transfer or assign real property, improvements located thereon or an interest therein to the Association and designate the same as Common Property.

(d) Declarant or the Association, upon the written approval or assent of Two-Thirds of the outstanding votes of Members, shall have the right and option to cause the Association to merge or consolidate with any similar association or associations. Upon a merger or consolidation of the Association with another association, the Property, rights and obligations of the Association, may, by operation of law or otherwise, be transferred to the surviving or consolidated association or, alternatively, the Property, rights and obligations of another association may, by operation of law or otherwise, be added to the Property, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants, conditions, restrictions, easements, liens and charges established by this Association within the Property, together with the Covenants established upon any other real property as one plan.

### ARTICLE III

#### PROPERTY RIGHTS IN THE COMMON PROPERTY

3.1 **Members' Easements of Enjoyment.** Subject to the provisions of Section 3.3 of this Article, every Member and every Resident shall have a right and easement of use and enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot; provided, however, such easement shall not give such person the right to make alterations, additions or improvements to the

**Common Property.**

**3.2 Title to the Common Property.** The Declarant shall convey the fee simple title to the Common Property to the Association, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association, in each case free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, easements reserved by or dedicated to governmental authorities and utility companies under the plat, this declaration or by other instruments, and mineral interests outstanding and of record in Dallas County, Texas.

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

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Property (including limiting the number of guests of Member);

(b) Following the approval by a Two-Thirds Member Vote by Class of Class A Members only, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving the Common Property and facilities and in aid thereof to mortgage Common Property;

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

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

(e) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Property; and

(f) Following approval by a Two-Thirds Member Vote, the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine.

**ARTICLE IV**

**COVENANT FOR MAINTENANCE ASSESSMENTS**

**4.1 Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser of a Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner,

hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association):

(a) Annual assessments or charges, to be paid in installments as the Board of Directors of the Association may elect;

(b) Special assessments for capital expenditures, such assessments to be fixed, established and collected from time to time as hereinafter provided; and

(c) Default assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests and invitees, such default assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular annual assessments, special assessments and default assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual assessments shall be payable as provided in this Article IV.

**4.2 Purpose of Assessments.** The Assessments levied by the Association shall be used:

(a) For the purposes of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance of private roadways, recreation and landscaped areas, including the maintenance of Ash Creek where it abuts the Property, or other Property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Property including, but not limited to, the payment of taxes on and insurance in connection with the Common Property and the repair, replacement and additions thereto;

(b) For paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the common Property, including the maintenance of Ash Creek where it abuts the Property;

(c) For carrying out the duties of the Board of Directors of the Association as set forth in Article V hereafter, including, but not limited to, the payment by the Association of all assessments and charges payable in connection with sewer, water and garbage pickup services and the installation and maintenance of lighting (if any) for the Common Property; and

(d) For carrying out the purposes of the Association as stated in its Articles of Incorporation. The Board may at any time ratably increase or decrease the amount of the annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs which are the Association's obligation.

#### **4.3 Basis and Amount of Assessments.**

(a) Until the year beginning January 1, 1999, the maximum annual assessment shall be Five Hundred and No/100 Dollars (\$500.00) for each Lot not owned by Declarant, and an amount equal to not more than twenty-five percent (25%) of such annual amount for each Lot owned by Declarant at the time of each such annual assessment. Any Builder shall pay an amount equal to fifty percent (50%) of the annual assessment. The Board of Directors may fix the annual assessment at any amount less than such maximum.

(b) Commencing with the year beginning January 1, 1999, and each year thereafter, the maximum annual assessment for the following year for each Lot, shall automatically increase ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership or the Board of Directors. The maximum assessment for each Lot owned by Declarant, at the time of annual assessment, shall be an amount equal to twenty-five percent (25%) of the maximum amount assessed against each Lot owned by Members other than Declarant or Builder, unless a Lot owned by Declarant is improved with a residential structure that is occupied, in which event the maximum assessment for such Lot shall be an amount equal to the maximum amount assessed against each Lot owned by other Members. The maximum annual assessment for each lot owned by a Builder at the time of annual assessment shall be an amount equal to fifty percent (50%) of the maximum amount assessed against each Lot owned by Members other than Declarant or Builder, unless a Lot owned by Declarant or Builder is improved with a residential structure that is occupied, in which event the maximum assessment for such Lot shall be an amount equal to the maximum amount assessed against each Lot owned by other Members.

(c) Provided that the Board has received approval by a Two-Thirds Member Vote By class, the maximum annual assessment for the following year for each Lot may exceed the maximum amounts set forth in Section 4.3(a) or (b) above.

**4.4 Special Assessments for Capital Improvements.** In addition to the annual Assessments authorized by Section 4.3 above, the Association may levy in any Assessment year a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto; provided that any such Assessment for capital improvements shall have been approved by a Two-Thirds Member

Vote By class.

**4.5 Uniform Rate of Assessment Within Classes of Members.** In recognition of the fact that while Declarant is the Owner of Lots, the benefits either Declarant or Builder receives from such Lots will be proportionately less than other Owners, the regular annual and special Assessments for Lots owned by Declarant and on which no Dwelling Unit is constructed shall be fixed at twenty-five percent (25%) of the Assessments for all other Lots and for Builder, the amount of any Assessment shall be fifty percent (50%) of the Assessments on all other Lots. Except as provided in this Section 4.5 and Section 4.3, and until such time as Additional Property is subjected to this Declaration in accordance with Section 2.4, the regular annual and special Assessments shall be fixed at a uniform rate for all Lots. Since Additional Property may involve common areas that disproportionately benefit the Lots within the particular phase of the project in which they are located, the Board may create different classes of Owners for purposes of determining Assessments, based on the Board's determination of the benefits to be received by each such class from certain Common Property. Except as provided above with respect to the Declarant or Builder within any such class created by the Board, the Assessments shall be uniform.

**4.6 Date of Commencement of Assessments; Due Date.** The annual assessments provided for herein shall commence as to all Lots on the date Declarant sells the first Lot to a Builder. The first annual assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessments provided for in Section 4.3 as the remaining number of months in that year bear to twelve. The first annual assessment shall be due and payable within 30 days after the date Declarant sells the first Lot to a Builder. The due date or dates, if it is to be paid in installments, of any special assessment under Section 4.4 or of any default assessment under Section 4.1, shall be fixed in the respective resolution authorizing such assessment. Notwithstanding anything contained to the contrary in this Section, it is hereby understood that the Board of Directors of the Association shall have the right to establish a payment date and payment period that is different from the monthly payment date provided herein.

**4.7 Duties of the Board with Respect to Assessments.**

(a) The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

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

(c) The Board shall, upon an Owner's written request and payment of any reasonable fee previously set by the Board, furnish to any Owner liable for each Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid. Each such certificate shall be

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

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

(a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified by the Board), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection thereof as hereinafter provided, be a continuing lien (the "Lien") on the Lot of the non-paying Owner which shall bind such Lot in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Any assumption of the obligation to pay an Assessment by a successor in title shall not relieve the propr Owner of his personal obligation to pay such Assessment. The lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Property or abandonment of his Lot.

(b) In furtherance of the Lien provided in Section 4.8(a), and to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the Board of Directors, in trust as Trustee (the "Trustee"), for the benefit of the Association, the Lot owned by such Owner, subject to all easements and other encumbrances affecting such Lot; provided, that each such grant shall be subordinated to the lien of any mortgage or deed of trust only to the extent provided in Section 4.9; and for these purposes the provisions of this Section 4.8(b), shall be deemed to have created a deed of trust (the "Deed of Trust") covering all of the Lots with a power of sale granted to the Trustee in accordance with the provision of Chapter 51 of the Texas Property Code (the "Code") and as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges, of the Deed of Trust promulgated by the State Bar of Texas for use by lawyers designated as Form No. 2402, and all amendments, modifications and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its president, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

(c) Without limitation of the remedies available to the Association and to the other Owners upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association

may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or subsequent laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section 4.8(c), the Owner of such Lot shall be divested of any and all interests and claims thereto, and the proceeds of any such sale shall be applied in the following order of priority: (i) to the payment of the costs and expenses of taking possession of the Lot, (ii) to the payment of reasonable Trustee's fees, (iii) to the payment of costs of advertisement and sale, (iv) to the payment of all unpaid Assessments and other amounts payable to such Owner to the Association hereunder, and (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to become the purchaser at the sale of any Lot pursuant to the Deed of Trust and shall have the right to be credited on the amount of its bid therefor all of the Assessments due and owing by the defaulting Owner to the Association as of the date of such sale.

(d) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest, then prevailing and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fee) in such action, and in the event a judgment is obtained such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

**4.9 Subordination of the Lien to Mortgages.** The lien securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) Bona fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien,

(b) Liens for ad valorem taxes or other public charges as are by applicable law made superior to the Association's lien; and

(c) Such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed

of trust or tax lien. Such sale shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

**4.10 Exempt Property.** The following property subject to this Declaration shall be exempted from the Assessments, charge and lien created herein:

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

(b) All common Property.

**4.11 Omission of Assessments.** The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed by the Board.

**4.12 Cessation of Association.** That in the event that the Enclave at Ashcreek Homeowners Association, its successors and assigns, cease to exist for any reason, the responsibility and maintenance of the streets shall become the responsibility of the abutting owners, jointly and severally.

## ARTICLE V

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

#### 5.1 Powers and Duties.

(a) The Board, for the benefit of the Property and the Owners, shall provide, and shall pay for out of Assessments, to the extent appropriate, the following:

(i) Care, preservation and maintenance of the Common Property, including without limitation, the purchase and upkeep of any desired personal property used in connection with the maintenance of the Common Property; maintenance of grounds, including care and replacement of trees, shrubs and grass, lighting systems and any installed sprinkler systems on the Common Property; the maintenance of all entry monuments; the maintenance of and the removal of debris from Ash Creek where it abuts the Property; and payment of utility charges and taxes, assessments and other charges properly assessed against the Common Property; provided



however, in the event the need for maintenance or repair is caused through the willful or negligent act of any Owner, the Owner's family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment attributable to such Owner's Lot.

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

(iii) Legal and accounting services.

(iv) If deemed appropriate by the Board, a policy or policies of insurance insuring the Association and the Board against any liability to the public or to the Owners (and/or invitees, guests or tenants), incident to the operation of the Association, in an amount not less than \$250,000 to indemnify against the claim of one person, \$500,000 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$100,000 per occurrence; which policy or policies shall contain an endorsement providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured.

(v) Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(vi) Such fidelity bonds as the Board may determine to be advisable.

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

(b) The Board shall have the following additional rights, powers and duties:

(i) To execute all replats of the Property and to execute all declarations of ownership for tax assessment purposes with regard to the Common Property on behalf of all Owners.

(ii) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board see

fit.

(iii) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and generally, to have all the powers necessary or incidental to the operation and manage of the Association.

(iv) To protect or defend the Common Property from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

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

(vi) To make available to each Owner upon written request within sixty (60) days after the end of each year an annual report.

(vii) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(viii) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provision or rule.

**5.2 Board Powers, Exclusive.** The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made from the Assessments and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

**5.3 Rules and Regulations.** The Association, through its Board of Directors, make and enforce reasonable rules and regulations governing the use of the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the By-Laws, or such rules and regulations may include reasonable monetary fines, suspension of the right to vote, the right to use any recreational facilities on the Common Property and the right to hold any office or appointed position in the Association or committee. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association.

## ARTICLE VI

### EASEMENTS

**6.1 Easement Reserved for the Association.** Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot and the Property for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association.

**6.2 Easements and Rights Reserved by Each Declarant.** Declarant hereby reserves for itself, its successors and assigns, the right to: (i) dedicate streets, walks and alleys throughout the Property, and (ii) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities and related facilities, which shall include, but not limited to, sewer (sanitary and storm), gas, electric, telephone, cable television and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance and reconstruction of improvements within the Property, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided, that any such improvements removed by Declarant shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. All claims for damages, if any, arising out of any such construction or other activities by Declarant are hereby waived by each Owner and the Association.

**6.3 Rights Reserved to Governmental Authorities and Utility Companies.** Full rights of ingress and egress shall be had by Declarant, any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconvenience caused thereby against the Declarant, or any utility company or governmental authority, or any of their agents or servants are hereby waived by each Owner and the Association. Declarant further reserves the right to alter, redesign or discontinue any street, avenue or way shown on the subdivision plat not necessary for ingress or egress to and from an Owner's Lot, subject to the approval of the applicable governmental authority, if required.

**6.4 Universal Easement.** Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other

cause. There shall be easements for the maintenance of any encroachment, settling or shifting. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they shall exist. Each of the easements referred to in this Section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot. Notwithstanding the foregoing, in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

## ARTICLE VII

### PROTECTIVE COVENANTS

**7.1 Residential Purpose Only.** Each Lot and Dwelling Unit shall be used exclusively for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanitarium or doctor's office, or other multiple-family dwelling shall be erected, placed, permitted or maintained on any Lot, or on any part thereof. No improvement or structure whatever, other than a private Dwelling Unit, patio walls, swimming pool, and customary outbuildings, garage, servants' quarters or guest house may be erected, placed or maintained on any Lot. All parking spaces shall be used exclusively for the parking of passenger automobiles, except as expressly permitted in Section 7.6.

**7.2 Rubbish, Etc.** No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

**7.3 Animals.** No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, not to exceed a total of four such animals, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons, and Guinea fowl shall not be deemed as household pets and are expressly prohibited. Notwithstanding the foregoing, however, no individual dogs or other animals deemed by the Board in its sole discretion to be dangerous to persons or other animals shall be raised, bred or kept on any Lot.

**7.4 Development Activity.** Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of Lots within the Property.

**7.5 Signs and Picketing.** No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from view except the following:

(a) **For Sale Signs.** An Owner may erect one (1) sign on his Lot, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Lot advertising the property for sale.

(b) **Declarant's Signs.** Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion, leasing and sale of the Lots.

(c) **Builders' Signs.** Any Dwelling Unit builder may utilize one professional sign (of not more than five (5) square feet in size) per Lot for advertising and sales promotion of such Dwelling Unit.

(d) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal, provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

**7.6 Parking and Prohibited Vehicles.**

(a) **Parking.** Vehicles shall be parked only in the garage or driveway serving the Dwelling Unit, or in such other paved areas as have been approved by the Board of Directors for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving the Dwelling Unit. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot, four (4) or more hours per day, four (4) or more days in any seven (7) day period. The Board of Directors may authorize on-street parking on a temporary basis for visitors and guests, subject to reasonable rules and regulations. No garage shall be modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the NCC. Notwithstanding the foregoing, however, a Builder may temporarily convert a garage into a sales or construction office, provided that the garage is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Property by such Builder. Garage doors visible for any street within the Property shall remain closed except during ingress or egress or when the garage is actively being used by the Owner of occupant.

(b) **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Areas. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed.

**7.7 Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional or other non-residential purposes.

**7.8 Mailboxes.** Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community. This provision with respect to mailboxes shall not apply when cluster box units are required by the United States Postal Service.

**7.9 Detached Buildings.** No detached accessory buildings, except for detached garages, shall be erected, placed or constructed upon any Lot without the prior consent of the Architectural Committee.

**7.10 Fences.**

(a) No fence, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Committee. All clotheslines, wood piles, tool sheds, air-conditioning equipment, sanitation facilities or other service facilities must be enclosed with fences, walls or landscaping, as may be required by the Architectural Committee, so as not to be generally visible by the public unless otherwise approved by the Architectural Committee in writing.

(b) The Architectural Committee shall promulgate specific Design Guidelines governing the composition and location of screening walls, fences and hedges to be located upon Lots. Screening walls shall be incorporated into and be harmonious with the overall landscaping plan developed for the Property.

(c) No chain link, wire or other open fencing shall be erected on a Lot if it is visible from the street along the front or side of any Dwelling Unit.

(d) The foregoing restrictions shall not be applicable to the construction or erection of any fence, wall or hedge on any Lot or the Common Property by Declarant.

**7.11 Antennae, Satellite Dishes and Solar Collectors.** No Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar implement or apparatus or solar collector panels or equipment upon any Lot unless:

(a) Such apparatus is erected and maintained in such a way that it is screened from the public view at a point in the center of the public street right-of-way directly in front of the Dwelling Unit erected on such Lot; and

(b) The Owner has received the prior written approval from the Architectural Committee to the size, location and screening of such apparatus.

**7.12 Chimneys.** All fireplace flues, smoke stacks and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys.

**7.13 Clotheslines.** No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the street.

**7.14 Window Treatment.** No aluminum foil, reflective film, signs or similar treatment shall be placed on windows or glass doors.

**7.15 Temporary Structures.** No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent or shack shall be placed on any Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders and Owners to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be deemed necessary or convenient during the period of and in connection with the sales of Lots, construction and selling of residential structures and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Declarant and builders of residential structures on Lots shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales or leasing operations on the Property, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion (as defined by the American Institute of Architects) of his last residential structure on the Property.

**7.16 Trash Receptacles and Collection.** All trash receptacles shall be screened by fences or shrubbery so as not to be generally visible by the public, unless otherwise approved by the Architectural Committee in writing. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and

attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of metal, plastic or masonry materials, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. All woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Dwelling Units, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers and shall regularly be removed from the Property and shall not be allowed to accumulate thereon.

**7.17 Swimming Pools.** No above-ground swimming pools shall be permitted.

**7.18 Truck Weight Limit.** Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or on any Lot.

**7.19 Utilities.** Dwelling Units shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type, shall require the prior written approval of the Architectural Committee. All telephone, electric, cable or other service lines shall be installed underground and shall meet all requirements of the applicable governmental authority.

**7.20 Paint.** All painted improvements and other painted structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or Dwelling Unit. The approval of the Architectural Committee other wise required for improvements under Article VIII, shall not be required for such repainting so long as neither the color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

**7.21. Athletic Facilities.** Tennis court lighting and fencing shall be allowed only with the approval of the Architectural Committee. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed within forty feet (40') from the front property line of any Lot in the subdivision, without the prior written consent of the Architectural Committee.

**7.22 Quiet Enjoyment.** No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or



that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thin of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Dwelling Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

**7.23 Air Conditioning Units.** Any air conditioning unit installed in a Unit shall be located or screened so as not to be visible from any street within the Property.

**7.24 Lighting.** Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved by the Architectural Committee.

**7.25 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any portion of the Property. No exterior sculpture, fountains, flags and birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted unless approved by the Architectural Committee.

**7.26 Business Use.** No garage sale, moving sale, rummage sale or similar activity and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Unit may conduct business activities within the Lot so long as:

- (a) The existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot;
- (b) The business activity conforms to all zoning requirements for the Property;
- (c) The business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and
- (d) The business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a builder with approval of the Declarant, with respect to its development and sale of the Property or its use of any Dwelling Units which it owns within the Property, including the operation of a timeshare or similar program.

**7.27 Traffic Sight Areas.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two and six feet above the Street shall be permitted to remain on any corner lot within fifteen (15) feet of the point formed by the intersection of the building set back lines of such Lot.

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

**7.29 Exterior Noise.** No exterior speakers, horns, whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

## ARTICLE VIII

### ARCHITECTURAL AND CONSTRUCTION RESTRICTIONS

**8.1 Type of Residence.** Only one detached single family Residence, not more than two and one-half (2 ½) stories shall be built or permitted on each Lot. All Residences shall have either an attached or detached enclosed garage. Carports on Lots are prohibited. No structure shall be moved from another location onto any Lot. All Residences and all improvements thereon including, but not limited to, fences, mail boxes, driveways and sidewalks must be kept in good repair and must be painted when necessary to preserve their attractiveness. Any change in the color of the paint on a Residence must be approved by the Architectural Committee.

**8.2 Living Area Requirements.** The gross square footage of any single family Residence constructed on a Lot shall not be less than one thousand seven hundred (1,700) square feet for a single story and one thousand eight hundred (1,800) square feet for a two story, exclusive of porches and garages.

**8.3 Location of Residence on Lot.** The location of each residence on a Lot will be approved by the Architectural Committee with its approval of the site plan and the final working plans and specifications. No building shall be located on any Lot nearer to a street than the minimum building setback lines shown on the Subdivision Plat and no building shall be located on any utility easement. All building setback dimensions shall adhere to City of Dallas Ordinance No. 23850.

**8.4 Building Materials; Type of Construction.** Unless otherwise approved by the Committee, at least seventy-five percent (75%) of the exterior wall area of all residences below eight (8) feet and above the foundation excluding detached garages (but not excluding attached garages), gables, windows, and door openings must be of masonry, stucco or brick veneer. No garage or accessory building shall exceed in height the dwelling to which it is appurtenant without the written consent of the Architectural Committee. Every garage and accessory building (except a greenhouse) shall correspond in style and architectural and exterior building materials with the dwelling to which it is appurtenant. No structure of any kind or character which incorporates frame construction on the exterior shall be erected on any Lot unless such structure receives at least two coats of paint at the time of construction or the exterior is of redwood or cedar material. Notwithstanding the foregoing, the Architectural Committee is empowered to waive this restriction, if in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design or material, and the resulting structure will not detract from the general appearance of the neighborhood. Wall materials used on all Lots shall be restricted to those types and colors of bricks approved by the Architectural Committee.

**8.5 Driveways.** Builder shall provide and install, at its own expense, driveway approaches in conformance with all applicable regulatory requirements. For any break in the concrete curb along streets, Builder agrees to "saw-cut" the concrete curb and street slab when constructing such break in conformance with city rules and regulations. Builder agrees to install driveway approaches within ten (10) business days of making the saw cut. Owner shall maintain at Owner's expense the driveway to the street occasioned by connecting the driveway thereto.

**8.6 Roof Material.** Unless otherwise approved by the Committee, roofs, of all residences shall be constructed so that the exposed material is asphalt or composition type shingles with a twenty (20) year warranty.

**8.7 Maximum Height.** No building or structure erected, altered or placed on, within or in the Properties shall exceed thirty-five feet (35') in height (measured from the top of the foundation to the topmost part of the roof) nor be more than two and one-half (2 ½) stories in height, provided however, that all applicable ordinances, regulations and statutes with respect to the maximum height of buildings and structures shall, at all times, be complied with.

**8.8 Garages.** A garage must be constructed and maintained to accommodate at least two (2) full-sized automobiles for each Dwelling Unit. Each driveway must accommodate two vehicles in front of the garage for off-street parking requirements. Rear detached garages are permitted. No garage shall be permanently enclosed for conversion

to any other use. Open carports are not permitted, unless special design circumstances warrant their use, in which case permission must be obtained in writing from the Architectural Committee.

**8.9 Landscaping.** All front yards and side yards on all Lots, up to the wing wall that extends from the side of the house to the side property line, must be sodded within three months after occupancy of the house. Side yards on corner lots must be sodded the full length of the property line adjacent to the street. After sodding, all yards must be maintained with grass or landscaping in a neat and well mown condition, free of unsightly weeds and overgrowth. Decorative ground cover rock in the front and side yard may be used in lieu of grass but may not exceed ten percent (10%) of the total area of the front and side yard. The Owner will be responsible for planting no fewer than three (3) three-inch (3") caliper trees on each lot.

**8.10 Utility Connections and Fees.** Builder shall construct, furnish or install all one-site utility extension, including without limitation, water and sewer extensions, from the point of connection adjacent to the perimeter of the Lot to any portion of the Lot. Builder further agrees to pay any utility deposit or charge, including any connection, tap or inspection fee, for water, sewer, electrical, gas, telephone, cable television, or utility service for the Lot or any part thereof and any costs or charges for meters for utility service.

**8.11 Compliance with Laws.** Construction of Improvements on each Lot must comply with the current building code published by the Congress of American Building Officials and all applicable local building codes that are enforced by governmental agencies. Builder is responsible for applying for and obtaining all applicable governmental permits and other approvals, including payment of all fees for those permits and other approvals.

**8.12 Care During Construction.** Builder shall take all reasonable precautions to minimize interference with traffic and to protect the general public and residents of the Subdivision, from injury from movement of vehicular traffic in connection with construction of each Lot. In addition to and without limiting the generality of the foregoing, Builder agrees to perform the following:

(a) **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.

(b) **Scrap Materials and Trash.** Builder agrees to keep scrap materials and trash produced in connection with the construction of a house on a Lot confined to a particular area of such Lot, preferably to the side, or behind, the house. Trash will be placed in a wiremesh, or solid container, within such area at the end of each work day and removed from the Lot frequently enough so that trash does not overflow from such container.

(c) **Clean Roads and Utilities.** Builder agrees to protect pavements, curbs, gutters, swales or drainage course, sidewalks, streets, utility structures

including, without limitation, fire hydrants, manhole covers, valve boxes, and second stage inlets and other property contiguous, in the vicinity of, or leading to each Lot from damage, and shall keep pedestrian and road rights-of-way and drives, and other property, clean and clear of equipment, building materials, dirt debris and similar materials. Builder further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency.

(d) **Maintenance.** Builder agrees to keep the interior and exterior of all improvements constructed on a Lot in good working condition and repair. Without limiting the generality of the foregoing, Builder agrees to promptly replace any glass, paint, roof materials, bricks, stone or other exterior building materials on any houses which are damaged or unduly worn.

## **ARTICLE IX**

### **ARCHITECTURAL STANDARDS**

#### **9.1 Approval Required; Procedures.**

(a) No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until requirements below have been fully met, and until the approval of the appropriate committee has been obtained pursuant to Sections 9.2 and 9.3 below. Such improvements include but are not limited to the construction or installation of sidewalks, driveways, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the NCC or the MC, as applicable, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet above ground and other significant vegetation on such Lot) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the appropriate Architectural committee as to the compliance of such plans and specifications with the Design Guidelines as may be published by the Architectural Committee from time to time including the harmony of external design, location, and appearance in relation to surrounding structures and topography. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the appropriate Architectural Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with the originally-approved

color scheme, or to rebuild in accordance with the originally-approved plans and specifications. The Architectural Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

(b) Following approval of any plans and specifications by the appropriate Architectural Committee, representative of the appropriate Architectural Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the appropriate Architectural Committee shall determine that such plans and specifications have not been approved or are not being complied with, the appropriate Architectural Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Disapproval of plans and specifications by the Architectural Committee may be based upon any ground which is consistent with the objects and purposes of this Declaration as defined in Design Guidelines which shall be promulgated by the Architectural Committees from time to time, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

(c) The Board of Directors or the Architectural Committee may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All Dwelling Units constructed on any portion of the Property 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 the activities of the Declarant, nor to construction or improvements or modifications to the Common Property by or on behalf of the Association. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Committee. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration. Because architectural trends, design trends, neighborhood character and general standards of taste change with the times, the New Construction Committee and the Modifications Committee shall not be bound by prior decisions of the Committees. The granting of approval on prior occasions is no assurance that the same or similar plans will be approved on future requests.

**9.2 New Construction Committee.** The New Construction Committee (NCC) shall consist of at least one (1), but not more than five (5), persons and shall have exclusive jurisdiction over all original construction on any portion of the Property. Until one hundred (100%) of the Property has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors may merge the NCC with the MC (defined below) or shall appoint the members of the NCC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the NCC may include architects, engineers and other persons who are not Members of the Association.

The NCC shall prepare and, on behalf of the Board of Directors, shall promulgate design and develop guidelines governing construction within the Property, which shall include application and review procedures to be followed in submitting an application for approval ("Design Guidelines"). The Design Guidelines shall be those of the Association, and the NCC shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The NCC shall make the Design Guidelines available to Owners who seek to engage in development of or construction upon all or any portion of the Property, and such Builders and Owners shall conduct their operations strictly in accordance therewith. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed disapproved.

**9.3 Modifications Committee.** The Board of Directors shall also establish in their sole option a Modifications Committee (MC) to consist of at least three (3) and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. As long as the Declarant has the power hereunder to appoint the members of the Board of Directors, a minimum of one (1) member of the MC shall be, at the discretion of Declarant, an individual designated by the Declarant. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC shall have exclusive jurisdiction after the initial sale from the Builder to an Owner over modifications, additions, or alterations made on any Lot or to any Dwelling Unit and the open space, if any, appurtenant thereto; provide, however, the MC may delegate this authority to the Board or other committee of the Association. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the NCC shall have the right to veto any action taken by the MC which the NCC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the NCC.

The Modifications Committee shall promulgate detailed standards and procedures governing its areas of responsibility and practice, consistent with those of the NCC. In addition thereto, the following shall apply: plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained

herein shall be construed to limit the right of an Owner to remodel the interior of a Dwelling Unit, or to paint the interior of a Dwelling Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Dwelling Unit visible from outside the Dwelling Unit shall be subject to approval hereunder. In the event that the MC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved.

**9.4 No Waiver of Future Approvals.** The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute an approval of similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

**9.5 Variance.** The Architectural Committee 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 the restrictions set forth in the body of this Declaration, or (c) estop the Committee 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. No request for a variance shall be considered if it affects the rights of adjoining Owner, unless affected Owner has granted written consent to the requested variance. Additionally, the Architectural committee shall not be obligated to grant a similar variance as a result of granting the same or similar variance in the past.

**9.6 Design Guidelines.** The Architectural Committee is authorized and empowered to consider all aspects of dwelling construction, construction of other improvements and the location, quality and quantity of landscaping on the Lots, and may disapprove aspects thereof which may, in the reasonable opinion of the Architectural Committee, adversely affect the living enjoyment of one or more Owners of the general value of the Properties. Also, the Architectural Committee is permitted to consider technological advances in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Committee. The Architectural Committee may, from time to time, publish and promulgate Design Guidelines which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. The Design Guidelines shall supplement this Declaration and are incorporated herein by reference. The Architectural Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of this Declaration. It is the intent of Declarant that this Declaration and any Design Guidelines issued by the Architectural Committee promote harmonious design throughout the Properties. However, approval of the plans and specifications by the Architectural Committee and compliance with the Design Guidelines does not insure compliance with the building code and other restrictions imposed by applicable governmental authorities.



**9.7 Landscaping Approval.** To preserve the aesthetic appearance of the Property project, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot by any Owner unless and until the plans therefor have been submitted to and approved in writing by the appropriate Architectural Committee. The provisions of the Article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Weather permitting, each Residence shall be fully landscaped within ninety (90) days from the date the Residence comes into existence.

**9.8 NO LIABILITY. NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF DESIGN GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND NEITHER THE NCC NOR THE MC SHALL BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVED OR DISAPPROVAL OF OR NON-COMPLIANCE WITH ANY PLANS OR SPECIFICATION, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION OR MODIFICATIONS TO ANY DWELLING UNIT.**

## **ARTICLE X**

### **MAINTENANCE OF LOTS AND DWELLING UNITS BY OWNERS**

**10.1 Duty of Maintenance.** The Owner of each Lot shall, at the Owner's sole cost and expense, keep the Owner's Lot and Dwelling Unit in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Mowing grass on a regular basis;
- (c) Tree and shrub pruning;
- (d) Adequately watering landscaped areas;

- (e) Keeping exterior lighting and maintenance facilities in working order;
- (f) Keeping lawn, garden and landscaped areas alive, free of weeds, and weeds attractive;
- (g) Keeping parking areas, driveways and roads in good repair;
- (h) Complying with all government health and police requirements;
- (i) Repair of exterior damages to improvements;
- (j) Cleaning of landscaped areas lying between public right-of-way lines and the Owner's Lot unless such streets or landscaped areas are expressly designated to be Common Properties maintained by applicable governmental authorities or the Association; and
- (k) Exercising care from causing run-off of pesticides or other chemicals into the storm sewer system.

**10.2 Enforcement.** If, in the opinion of the Association, any Owner has filed in any of the foregoing duties or responsibilities, then the Association may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice, perform the care or make arrangements with the Association for making the repairs and maintenance required. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of any Lot on which such work is performed shall be liable for the cost of such work (such costs constituting a default assessment as specified in Section 4.1 hereof) and shall promptly reimburse the Association for such cost. If such Owner shall fail to reimburse the Association for such cost. If such Owner shall fail to reimburse the Association, the said indebtedness shall be a debt of said Owner, and shall constitute a lien against the Lot on which said work was performed. Such lien shall have the same attributes as the lien for Assessments as set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

## **ARTICLE XI**

### **RIGHTS OF THE CITY, INDEMNITY**

**11.1** The City shall have the right, but not the duty, to perform the maintenance obligations of the Association if the Association fails to perform its maintenance obligations within ten (10) days after receipt by the Association of written notice from the City stating the nature and extent of the Associations failure to maintain the common property.

11.2 If the City assumes the maintenance obligation, the City shall have the right of access to maintain the common property.

11.3 The Association must pay the City within 90 days after receipt of the City's invoice for any maintenance work City chooses to perform on the common property. If the Association fails to reimburse the City within the 90-day period, the Association is deemed to be in default of its obligations under Article XI. During the period of any default, City may, at its sole option, exercise any of the following rights and remedies until City is fully reimbursed for the expenses of maintenance: (a) collect assessments, charges or other fees normally levied by the Association against an owner under this declaration, including the right to exercise any remedy the Association has against an Owner as provided in this declaration to collect existing or future unpaid assessments, charges or other fees; (b) enter into separate installment or other agreements with either the Association or any Owner to collect assessments, charges or other fees for the purpose of reimbursing the City; or (c) take legal action against the Association, or against homeowners who have defaulted in the payment of assessments or other charges or fees due under this declaration, in order to reimburse the City of its maintenance expenses under this Article. Unless otherwise provided by separate agreement between the City and the Association, in a default situation under this paragraph, the Association may not collect any assessment, charge or other fee levied under this declaration until the City has been fully reimbursed. The Association may cure any default under this paragraph by immediately tendering the amount due for maintenance under the bill sent by the City, less the amount of any assessments, charges or other fees collected by the City as reimbursement. City's failure to exercise any of the options described above in a default situation shall not be deemed as a waiver of the rights to collect any reimbursements due from the Association nor as a waiver of any subsequent default.

11.4 In the event that the Enclave at Ashcreek Homeowners Association, its successors and assigns, cease to exist for any reason, the responsibility and maintenance of the common property shall become the responsibility of the abutting owners, jointly and severally.

11.5 In consideration of the City's approval of the plat for the subdivision and acceptance of this agreement, the Association agrees to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any claims, lawsuits, judgements, costs and expenses for damages to the private streets or common property, or for any personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may result from, arise out of or be occasioned by: (1) the design of or methods of construction, operation, repair or maintenance of the private streets or common property, **REGARDLESS OF THE CAUSE OF THE DAMAGE OR DISREPAIR**; (2) the Association's failure to repair or maintain the private streets or common property, **REGARDLESS OF WHETHER OR NOT SUCH FAILURE IS NEGLIGENT**; (3) the use of private streets or common property by governmental vehicles or equipment of the City, or vehicles or equipment of a contractor of the City, for any municipal or public purpose, except that the Association is not required to indemnify the City to the extent that City's or City's contractor's negligence or gross negligence in the course of such use is the sole proximate cause of any damages or injury; and (4) the Association's negligence or gross negligence in its or its members' use,

operation or maintenance of the private streets or common property or in the performance of responsibilities (as designated by City ordinance, final recorded plat, instrument, contract or other law) for the use, operation and maintenance of the private streets or common property. Further, in the case of damage or injury arising under (3), if the negligence or gross negligence of City (or City's contractor), its officers, agents or employees, and the Association is joint and concurrent, responsibility and indemnity, if any, shall be apportioned in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to City under Texas law. This indemnity is strictly for the benefit of City and Association and shall not be construed to grant or convey any rights, contractual or otherwise, to any third person or entity. The failure of the Association to perform its obligations under the rest of this agreement or the subsequent assumption of the obligations by City as a result of the Association's failure, as described in Paragraph 11.1, does not relieve or excuse the Association from its liability under this indemnity.

## ARTICLE XII

### GENERAL PROVISIONS

**12.1 Power of Attorney.** Each and every Owner and Member hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following; provided, however, to the extent this Declaration requires the assent of a certain number of the Members as a condition to such action, such assent has been obtained:

(a) To exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;

(b) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) To sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Dallas County Clerk's Office and shall remain in full force and effect thereafter until all Lots owned by Declarant have been sold and conveyed by Declarant to Class A Members.

## **12.2 Duration.**

(a) This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50<sup>th</sup>) anniversary of the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Lots within the Property and recorded in the Deed Records of Dallas County, Texas, which contains and sets forth an agreement to abolish this Declaration; provided, however, no such agreement where approved by less than seventy-five percent (75%) of the Owners of all Lots within the Property to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

(b) The Dallas City Council after recommendation by the City Plan Commission may by resolution filed in the Deed Records terminate this agreement if the Council finds physical conditions of the property and the surrounding areas have substantially changed to warrant the termination of this agreement. The Director of Planning shall give notice to each owner not less than ten (10) days before the date set for the City Plan Commission hearing and the City Council hearing by depositing the notice properly addressed and postage paid in the United States Post Office to each owner as the ownership appears on the last approved Tax Roll.

**12.3 Amendments.** This Declaration is expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. This Declaration may be amended and/or changed in part as follows:

(a) In response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, Declarant shall have the complete and unrestricted right and privilege to amend, change, revise, modify or delete portions of this Declaration, and each and every Owner and Member specifically and affirmatively authorizes and empowers Declarant, utilizing the attorney-in-fact status set forth above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in their sole and absolute discretion) shall deem reasonable and appropriate.

(b) Section 3.2 and Article XI of this declaration cannot be amended, changed, revised, modified or deleted except by approval of the Dallas City Plan Commission and approval as to form by the City Attorney.

(c) Declarant reserves the right in its sole discretion to amend, alter, delete, or remove these restrictions without the consent of Owners so long as Class B Membership exists, where such amendment, alteration, deletion or removal is in the best interests of the Owners, as determined by Declarant in its sole discretion. The sole restriction on Declarant's ability to amend the Declaration in this fashion is that the amendment must not be illegal or against public policy.

(c) With the assent of a Two-Thirds Members Vote.

Any and all amendments shall be recorded in the Office of the County Clerk of Dallas County, Texas.

**12.4 Enforcement.** Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The lien created hereby on each Lot shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property to the same extent as if the parent was directly responsible for the action of their child. Enforcement of this Declaration may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by this Declaration, but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association, each Owner and the applicable governmental authority are each specifically authorized (but not obligated) to enforce this Declaration. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party.

**12.5 Validity.** Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of this Declaration conflicts with mandatory provisions of any ordinance or regulation promulgated by the applicable governmental authority (including, without limitation, any comprehensive zoning ordinance), then such governmental requirement shall control.

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

Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

**12.7 Registration with the Association.** Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, the following information: (a) the full name and address of each Owner, Member and Resident; (b) the business address, occupation and telephone numbers of each Resident; (c) the description and license plate number of each automobile owned or used by a Resident and brought within the Property; and (d) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

**12.8 Notices to Resident/Member/Owner.** Any notice required to be give to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when (i) deposited in the United States Mail, postage prepaid, addressed to the last know address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing; or when (ii) delivered by hand or by messenger to the last know address of such person within the Property; or when (iii) posted on the Association's bulletin board for at lease thirty (30) consecutive calendar days.

**12.9 Notices to Mortgagees.** The Holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

**12.10 Disputes.** Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board. These determinations (absent arbitrary and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

**12.11 Attorney's Fees.** All attorney's fees incurred by the Association or the Declarant in the enforcement of this Declaration, and all future amendments shall be the obligation of the Owner and Owner agrees to pay all such attorney's fees incurred by the Association and/or Declarant.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

**DECLARANT:**

**THE ENCLAVE AT ASHCREEK, L.P.**  
a Texas Limited Partnership

BY: LEN-MAC CORP.  
a Texas Corporation,  
General Partner

BY: *William D. White, III*  
William D. White, III  
President

**Notary Acknowledgment**

STATE OF TEXAS      §  
                                 §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on this 5<sup>th</sup> day of Jan, 2000, by William D. White, III, President of LEN-MAC CORP., a Texas Corporation, on behalf of said corporation as general partner and on behalf of The Enclave at Ash Creek, L.P., a Texas Limited Partnership.



*[Signature]*  
Notary Public in and for the State of Texas

APPROVED AS TO FORM:  
Madeline B. Johnson, City Attorney

By: *[Signature]*  
Assistant City Attorney

**CERTIFICATE OF APPROVAL**

I, HECTOR GARCIA, Chairman of the City Plan Commission of the City of Dallas, State of Texas, hereby certify that this Declaration of Covenants and Restrictions for the Enclave at Ash Creek was duly filed for approval with the City Plan Commission of the City of Dallas on the 5<sup>th</sup> day of January A.D. 2000, and same was duly approved on the 16<sup>th</sup> day of January A.D. 2000 by the said Commission.

*[Signature]*  
Chairman  
City Plan Commission  
Dallas, Texas

Attest: *[Signature]*  
Secretary



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Any provision herein which restricts the sale, rental, or use of the described real property because of color or race is invalid and unenforceable under federal law.

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

JAN 18 2000



*Earl Bellock*  
COUNTY CLERK, Dallas County, Texas

FILED

00 JAN 18 PM 12:27

BELLOCK  
COUNTY CLERK  
DALLAS COUNTY

**McDonald**  
**Associates, PLLC**

Robert B. Baldwin, AICP  
Land Planner

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